

**Introduced by Committee on Judiciary (Senators Schiff
(Chair), Burton, Escutia, Haynes, Morrow, O'Connell,
Peace, Sher, and Wright)**

February 26, 1999

An act to amend Sections 2530.2, 2725.1, 4052, 4827, 10145, 10177, 10229, 10232, 11018.12, 17539.15, 17550.14, 17550.16, 17550.23, 17550.41, 19950.2, 21701.1, and 23104.2 of, and to amend and renumber Section 730 of, the Business and Professions Code, to amend Sections 1102.6c, 1739.7, 1793.22, 1815, and 3269 of the Civil Code, to amend Sections 631 and 1167.3 of the Code of Civil Procedure, to amend Sections 25102 and 28956 of the Corporations Code, to amend Sections 8927, 42238.95, 44259.3, 44403, 44579.4, 44731, 51201.5, 51554, 51555, 51871, 52122, 54745, 54748, 54761.3, 60603, 60640, 69621, and 89010 of the Education Code, to amend Sections 10262, 15112, and 15151 of the Elections Code, to amend Sections 4252, 4351, 4901, 6380, 7572, and 7575 of the Family Code, to amend Sections 6420 and 7151 of the Fish and Game Code, to amend Sections 221, 5852, 14651, 20797, and 31753 of the Food and Agricultural Code, to amend Sections 3517.65, 4560, 6253, 6505.5, 7073, 7260, 7262.5, 9359.01, 12652, 13965.2, 14838.5, 18523.3, 19141.3, 19175.6, 19576.5, 19582.3, 20068.2, 20677, 21028, 22200, 22209, 22754.5, and 54975 of, to amend the heading of Article 5 (commencing with Section 63043) of Chapter 2 of Division 1 of Title 6.7 of, to amend and renumber Sections 66400, 66401, 66402, and 66403 of, and to amend and renumber the heading of Chapter 6 (commencing with Section 66400) of Division 1 of Title 7 of, and to repeal Section 54953 of, the Government Code, to amend Sections 1206, 1261.5, 1261.6,



1300, 1351.2, 1357.09, 1357.50, 1357.51, 1367.24, 1442.5, 1502.6, 1522, 1746, 1771.9, 1797.191, 18020, 18025.5, 25989.1, 33392, 33492.22, 44015, 111940, 120440, 124980, and 129820 of, to amend and renumber Section 50518 of, and to repeal Section 33298 of, the Health and Safety Code, to amend Sections 1063.6, 1765.1, 10095, 10116.5, 10194.8, 10232.8, 10273.4, 10700, and 10841 of, and to amend and renumber Sections 12963.96 and 12963.97 of, the Insurance Code, to amend Sections 138.4, 201.5, 1771.5, 3716.2, 4707, and 5433 of the Labor Code, to amend Sections 136.2, 148.10, 290, 298, 299, 299.6, 350, 550, 594, 626.9, 653m, 790, 831.5, 1203.097, 1269b, 1347, 3003, 4536.5, 5066, 6051, 6065, 6126, 12071, 12085, 12086, 12370, 13515.55, and 13602 of the Penal Code, to amend Section 10218, 14575, and 33001 of the Public Resources Code, to amend Sections 64, 401.15, 995.2, 3772.5, 17275.6, 19057, 19141.6, 19271, 23038.5, 23610.5, 23701t, 23704, 24416.2, 41136, and 65004 of the Revenue and Taxation Code, to amend Section 1095 of the Unemployment Insurance Code, to amend Sections 2478, 2810, 4466, 11614, and 40000.15 of the Vehicle Code, to amend Section 1062 of the Water Code, to amend Sections 319, 366.26, 781, 1801, 5768.5, 6609.1, 10980, 11369, 11401, 12302.3, 16118, and 16501.1 of, to amend and renumber Sections 1790, 1791, 1792, 1793, and 11008.19 of, and to amend and repeal Section 17012.5 of, the Welfare and Institutions Code, and to amend Section 8.2 of Chapter 545 of the Statutes of 1943, Section 2 of Chapter 21 of the Statutes of 1998, Section 111 of Chapter 310 of the Statutes of 1998, Section 3 of Chapter 652 of the Statutes of 1998, Section 1 of Chapter 722 of the Statutes of 1998, Section 11 of Chapter 760 of the Statutes of 1998, Section 12 of Chapter 760 of the Statutes of 1998, and Section 10 of Chapter 969 of the Statutes of 1998, relating to maintenance of the codes.

LEGISLATIVE COUNSEL'S DIGEST

SB 966, as introduced, Committee on Judiciary. Maintenance of the codes.

Existing law directs the Legislative Counsel to advise the Legislature from time to time as to legislation necessary to maintain the codes.

This bill would restate existing provisions of law to effectuate the recommendations made by the Legislative Counsel to the Legislature for consideration during 1999, and would not make any substantive change in the law.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 730 of the Business and
2 Professions Code, as added by Chapter 400 of the Statutes
3 of 1997, is amended and renumbered to read:

4 ~~730.~~

5 730.5. (a) It is unprofessional conduct, and a crime, as
6 provided in Section 4935, for a physician and surgeon,
7 osteopathic physician, dentist, or podiatrist to direct or
8 supervise the performance of acupuncture involving the
9 application of a needle to the body of a human being by
10 a person licensed under this division who is not licensed
11 pursuant to the Acupuncture Licensure Act, *established*
12 *by* Chapter 12 (commencing with Section 4925).

13 (b) It is unprofessional conduct, and a crime, as
14 provided in Section 4935, for a person licensed under this
15 division who is not licensed pursuant to the Acupuncture
16 Licensure Act, *established by* Chapter 12 (commencing
17 with Section 4925), to perform acupuncture involving the
18 application of a needle to the body of a human being at
19 the direction or under the supervision of a physician and
20 surgeon, osteopathic physician, dentist, or podiatrist.

21 SEC. 2. Section 2530.2 of the Business and Professions
22 Code is amended to read:

23 2530.2. As used in this chapter, unless the context
24 otherwise requires:

25 (a) "Board" means the Speech-Language Pathology
26 and Audiology Board or any successor.

27 (b) "Person" means any individual, partnership,
28 corporation, limited liability company, or other
29 organization or combination thereof, except that only
30 individuals can be licensed under this chapter.



1 (c) A “speech-language pathologist” is a person who
2 practices speech-language pathology.

3 (d) “The practice of speech-language pathology”
4 means the application of principles, methods, and
5 procedures for measurement, testing, identification,
6 prediction, counseling, or instruction related to the
7 development and disorders of speech, voice, or language
8 for the purpose of identifying, preventing, managing,
9 habilitating or rehabilitating, ameliorating, or modifying
10 those disorders and conditions in individuals or groups of
11 individuals; conducting hearing screenings; and the
12 planning, directing, conducting and supervision of
13 programs for identification, evaluation, habilitation, and
14 rehabilitation of disorders of speech, voice, or language.

15 (e) “Speech-language pathology aide” means any
16 person meeting the minimum requirements established
17 by the board, who works directly under the supervision
18 of a speech-language pathologist.

19 (f) (1) “Speech-language pathology assistant” means
20 a person who meets the academic and supervised training
21 requirements set forth by the board and who is approved
22 by the board to assist in the provision of speech-language
23 pathology under the direction and supervision of a
24 speech-language pathologist who shall be responsible for
25 the extent, kind, and quality of the services provided by
26 the speech-language pathology assistant.

27 (2) The supervising speech-language pathologist
28 employed or contracted for by a public school may hold
29 either a valid and current license issued by the board or
30 a valid, current, and professional clear clinical or
31 rehabilitative services credential in language, speech,
32 and hearing issued by the Commission on Teacher
33 Credentialing. For purposes of this paragraph, a “clear”
34 credential is a credential that is not issued pursuant to a
35 waiver or emergency permit and is as otherwise defined
36 by the Commission on Teacher Credentialing.

37 (g) An “audiologist” is one who practices audiology.

38 (h) “The practice of audiology” means the application
39 of principles, methods, and procedures of measurement,
40 testing, appraisal, prediction, consultation, counseling,

1 instruction related to auditory, vestibular, and related
2 functions, and the modification of communicative
3 disorders involving speech, language, auditory behavior
4 or other aberrant behavior resulting from auditory
5 dysfunction; and the planning, directing, conducting,
6 supervising, or participating in programs of identification
7 of auditory disorders, hearing conservation, cerumen
8 removal, aural habilitation, and rehabilitation, including
9 hearing aid recommendation and evaluation procedures
10 including, but not limited to, specifying amplification
11 requirements and evaluation of the results thereof,
12 auditory training, and speech reading.

13 (i) “Audiology aide” means any person, meeting the
14 minimum requirements established by the board, who
15 works directly under the supervision of an audiologist.

16 (j) “Medical board” means the Medical Board of
17 California or a division of the board.

18 (k) A “hearing screening” performed by a
19 speech-language pathologist means a binary puretone
20 screening at a preset intensity level for the purpose of
21 determining if the screened individuals are in need of
22 further medical or audiological evaluation.

23 (l)

24 (l) “Cerumen removal” means the nonroutine
25 removal of cerumen within the cartilaginous ear canal
26 necessary for access in performance of audiological
27 procedures that shall occur under physician and surgeon
28 supervision. Cerumen removal, as provided by this
29 section, shall only be performed by a licensed audiologist.
30 ~~Physician~~ “Physician and surgeon—supervision
31 supervision” shall not be construed to require the
32 physical presence of the physician, but shall include all of
33 the following:

34 (1) ~~Collaboration~~ *The supervising physician shall*
35 *collaborate* on the development of written standardized
36 protocols. The protocols shall include a requirement that
37 the supervised audiologist immediately refer to an
38 appropriate physician any trauma, including skin tears,
39 bleeding, or other pathology of the ear discovered in the
40 process of cerumen removal as defined in this subdivision.

1 ~~Approval by the~~ The supervising physician ~~of shall~~
2 ~~approve~~ the written standardized protocol.

3 (3) The supervising physician shall be within the
4 general vicinity, as provided by the physician-audiologist
5 protocol, of the supervised audiologist and available by
6 telephone contact at the time of cerumen removal.

7 (4) A licensed physician and surgeon may not at any
8 one time supervise more than two audiologists for
9 purposes of cerumen removal.

10 SEC. 3. Section 2725.1 of the Business and Professions
11 Code is amended to read:

12 2725.1. Notwithstanding any other provision of law, a
13 registered nurse may dispense drugs or devices upon an
14 order by a licensed physician and surgeon when the nurse
15 is functioning within a licensed clinic as defined in
16 paragraphs (1) and (2) of subdivision (a) of Section 1204
17 of, or within a clinic as defined in subdivision (b) or (c)
18 of Section 1206, of the Health and Safety Code.

19 ~~No clinic shall~~ A clinic may not employ a registered
20 nurse to perform dispensing duties exclusively. ~~No A~~
21 registered nurse ~~shall~~ may not dispense drugs in a
22 pharmacy; or keep a pharmacy, open shop, or drugstore
23 for the retailing of drugs or poisons. ~~No A~~ registered nurse
24 ~~shall~~ may not compound drugs. Dispensing of drugs by a
25 registered nurse shall not include substances included in
26 the California Uniform Controlled Substances Act
27 (Division 10 (commencing with Section 11000) of the
28 Health and Safety Code). ~~Nothing in this~~ This section
29 ~~shall does not~~ exempt a clinic from the provisions of
30 Article 3.5 ~~(commencing with Section 4063)~~ 13
31 (commencing with Section 4180) of Chapter 9.

32 SEC. 4. Section 4052 of the Business and Professions
33 Code is amended to read:

34 4052. (a) Notwithstanding any other provision of
35 law, a pharmacist may:

36 (1) Furnish a reasonable quantity of compounded
37 medication to a prescriber for office use by the prescriber.

38 (2) Transmit a valid prescription to another
39 pharmacist.

(3) Administer, orally or topically, drugs and biologicals pursuant to a prescriber's order.

(4) Perform the following procedures or functions in a licensed health care facility in accordance with policies, procedures, or protocols developed by health professionals, including physicians, pharmacists, and registered nurses, with the concurrence of the facility administrator:

(A) Ordering or performing routine drug therapy-related patient assessment procedures including temperature, pulse, and respiration.

(B) Ordering drug therapy-related laboratory tests.

(C) Administering drugs and biologicals by injection pursuant to a prescriber's order (the administration of immunizations under the supervision of a prescriber may also be performed outside of a licensed health care facility).

(D) Initiating or adjusting the drug regimen of a patient pursuant to an order or authorization made by the patient's prescriber and in accordance with the policies, procedures, or protocols of the licensed health care facility.

(5) (A) Perform the following procedures or functions as part of the care provided by a health care facility, a licensed home health agency, a licensed clinic in which there is physician oversight, or a provider who contracts with a licensed health care service plan with regard to the care or services provided to the enrollees of that health care service plan, in accordance with policies, procedures, or protocols of that facility, home health agency, in accordance with subparagraph (D), licensed clinic, or health care service plan developed by health professionals, including physicians, pharmacists, and registered nurses, ~~that~~ *which shall require*, at a minimum ~~shall require~~, that the medical records of the patient be available to both the patient's prescriber and the pharmacist, and that the procedures to be performed by the pharmacist relate to a condition for which the patient has first seen a physician:

- 1 (i) Ordering or performing routine drug
2 therapy-related patient assessment procedures including
3 temperature, pulse, and respiration.
- 4 (ii) Ordering drug ~~therapy-related~~ *therapy-related*
5 laboratory tests.
- 6 (iii) Administering drugs and biologicals by injection
7 pursuant to a prescriber's order (the administration of
8 immunizations under the supervision of a prescriber may
9 also be performed outside of a licensed health care
10 facility).
- 11 (iv) Adjusting the drug regimen of a patient pursuant
12 to a specific written order or authorization made by the
13 patient's prescriber for the individual patient, and in
14 accordance with the policies, procedures, or protocols of
15 the health care facility, home health agency, licensed
16 clinic, or health care service plan. Adjusting the drug
17 regimen does not include substituting or selecting a
18 different drug, except as authorized by Section 4073.
- 19 (B) A patient's prescriber may prohibit, by written
20 instruction, any adjustment or change in the patient's
21 drug regimen by the pharmacist.
- 22 (C) The policies, procedures, or protocols referred to
23 in this paragraph shall require that the pharmacist
24 function as part of a multidisciplinary group that includes
25 physicians and direct care registered nurses. The
26 multidisciplinary group shall determine the appropriate
27 participation of the pharmacist and the direct care
28 registered nurse.
- 29 (D) A pharmacist performing any procedure
30 authorized under this paragraph for a licensed home
31 health agency shall perform the procedures in
32 accordance with a written, patient-specific protocol
33 approved by the treating or supervising physician. Any
34 change, adjustment, or modification of an approved
35 preexisting treatment or drug therapy shall be provided
36 in writing to the treating or supervising physician within
37 24 hours.
- 38 (6) Manufacture, measure, fit to the patient, or sell and
39 repair dangerous devices or furnish instructions to the

1 patient or the patient's representative concerning the use
2 of those devices.

3 (7) Provide consultation to patients and professional
4 information, including clinical or pharmacological
5 information, advice, or consultation, to other health care
6 professionals.

7 (b) Prior to performing any procedure authorized by
8 paragraph (4) of subdivision (a), a pharmacist shall have
9 received appropriate training as prescribed in the
10 policies and procedures of the licensed health care
11 facility. Prior to performing any procedure authorized by
12 paragraph (5) of subdivision (a), a pharmacist shall have
13 either (1) successfully completed clinical residency
14 training or (2) demonstrated clinical experience in direct
15 patient care delivery.

16 (c) Nothing in this section ~~shall affect~~ *affects* the
17 requirements of existing law relating to maintaining the
18 confidentiality of medical records.

19 (d) Nothing in this section ~~shall affect~~ *affects* the
20 requirements of existing law relating to the licensing of
21 a health care facility.

22 SEC. 5. Section 4827 of the Business and Professions
23 Code is amended to read:

24 4827. Nothing in this chapter prohibits any person
25 from:

26 (a) Practicing veterinary medicine as a bona fide
27 owner of one's own animals. This exemption applies to the
28 following:

29 (1) The owner's bona fide employees.

30 (2) Any person assisting the owner, provided that the
31 practice is performed gratuitously.

32 (b) ~~The lay~~ *Lay* testing of poultry by the whole blood
33 agglutination test. For purposes of this section, "poultry"
34 means flocks of avian species maintained for food
35 production, including, but not limited to, chickens,
36 turkeys, and exotic fowl.

37 (c) Making any determination as to the status of
38 pregnancy, sterility, or infertility upon livestock, equine,
39 or food animals at the time an animal is being

1 inseminated, providing no charge is made for this
2 determination.

3 (d) Administering sodium ~~pentobarbital~~
4 *pentobarbital* for euthanasia of sick, injured, homeless, or
5 unwanted domestic pets or animals; without the presence
6 of a veterinarian when the person is an employee of an
7 animal control shelter and its agencies or humane society
8 and has received proper training in the administration of
9 sodium ~~pentobarbital~~ *pentobarbital* for these purposes.

10 SEC. 6. Section 10145 of the Business and Professions
11 Code is amended to read:

12 10145. (a) (1) A real estate broker who accepts
13 funds belonging to others in connection with a
14 transaction subject to this part shall deposit all those funds
15 that are not immediately placed into a neutral escrow
16 depository or into the hands of the broker's principal, into
17 a trust fund account maintained by the broker in a bank
18 or recognized depository in this state. All funds deposited
19 by the broker in a trust fund account shall be maintained
20 there until disbursed by the broker in accordance with
21 instructions from the person entitled to the funds.

22 (2) Notwithstanding the provisions of paragraph (1),
23 a real estate broker collecting payments or performing
24 services for investors or note owners in connection with
25 loans secured by a first lien on real property may deposit
26 funds received in trust in an out-of-state depository
27 institution insured by the Federal Deposit Insurance
28 Corporation, if the investor or note owner is any one of
29 the following:

30 (A) The Federal National Mortgage Association, the
31 Government National Mortgage Association, the Federal
32 Home Loan Mortgage Corporation, the Federal Housing
33 Administration, or the United States Department of
34 Veterans Affairs.

35 (B) A bank or subsidiary thereof, bank holding
36 company or subsidiary thereof, trust company, savings
37 bank or savings and loan association or subsidiary thereof,
38 savings bank or savings association holding company or
39 subsidiary thereof, credit union, industrial bank or
40 industrial loan company, or insurance company doing

1 business under the authority of, and in accordance with,
2 the laws of this state, another state, or the United States
3 relating to banks, trust companies, savings banks or
4 savings associations, credit unions, industrial banks or
5 industrial loan companies, or insurance companies, as
6 evidenced by a license, certificate, or charter issued by
7 the United States or a state, district, territory, or
8 commonwealth of the United States.

9 (C) Trustees of a pension, profit-sharing, or welfare
10 fund, if the pension, profit-sharing, or welfare fund has a
11 net worth of not less than fifteen million dollars
12 (\$15,000,000).

13 (D) A corporation with outstanding securities
14 registered under Section 12 of the Securities Exchange
15 Act of 1934 or a wholly owned subsidiary of that
16 corporation.

17 (E) A syndication or other combination of any of the
18 entities specified in subparagraph (A), (B), (C), or (D)
19 that is organized to purchase the promissory note.

20 (F) The California Housing Finance Agency or a local
21 housing finance agency organized under the Health and
22 Safety Code.

23 (G) A licensed residential mortgage lender or servicer
24 acting under the authority of that license.

25 (H) A licensed real estate broker selling all or part of
26 the loan, note, or contract to a lender or purchaser
27 specified in subparagraphs (A) to (G), inclusive,~~of this~~
28 ~~subdivision.~~

29 (3) A real estate broker who deposits funds held in
30 trust in an out-of-state depository institution in
31 accordance with ~~the provisions of~~ paragraph (2) shall
32 make available, in this state, the books, records, and files
33 pertaining to the trust accounts to the commissioner or
34 the commissioner's representatives; or pay the
35 reasonable expenses for travel and lodging incurred by
36 the commissioner or the commissioner's representatives
37 in order to conduct an examination at an out-of-state
38 location.

39 (b) A real estate broker acting as a principal pursuant
40 to Section 10131.1 shall place all funds received from

1 others for the purchase of real property sales contracts or
2 promissory notes secured directly or collaterally by liens
3 on real property in a neutral escrow depository unless
4 delivery of the contract or note is made simultaneously
5 with the receipt of the purchase funds.

6 (c) A real estate sales person who accepts trust funds
7 from others on behalf of the broker under whom he or she
8 is licensed shall immediately deliver the funds to the
9 broker or, if so directed by the broker, shall deliver the
10 funds into the custody of the broker's principal or a
11 neutral escrow depository; or shall deposit the funds into
12 the broker's trust fund account.

13 (d) If not otherwise expressly prohibited by this part,
14 a real estate broker may, at the request of the owner of
15 trust funds or of the principals to a transaction or series
16 of transactions from whom the broker has received trust
17 funds, deposit the funds into an interest-bearing account
18 in a bank, savings and loan association, credit union, or
19 industrial loan company, the accounts of which are
20 insured by the Federal Deposit Insurance Corporation, if
21 all of the following requirements are met:

22 (1) The account is in the name of the broker as trustee
23 for the designated beneficiary or principal of a
24 transaction or series of transactions.

25 (2) All of the funds in the account are covered by
26 insurance provided by an agency of the United States.

27 (3) The funds in the account are kept separate,
28 distinct, and apart from funds belonging to the broker or
29 to any other person for whom the broker holds funds in
30 trust.

31 (4) The broker discloses to the person from whom the
32 trust funds are received, and to a beneficiary whose
33 identity is known to the broker at the time of establishing
34 the account, the nature of the account, how interest will
35 be calculated and paid under various circumstances,
36 whether service charges will be paid to the depository
37 and by whom, and possible notice requirements or
38 penalties for withdrawal of funds from the account.

(5) Interest earned on funds in the account may not inure directly or indirectly to the benefit of the broker or a person licensed to the broker.

(6) In an executory sale, lease, or loan transaction in which the broker accepts funds in trust to be applied to the purchase, lease, or loan, the parties to the contract shall have specified in the contract or by collateral written agreement the person to whom interest earned on the funds is to be paid or credited.

(e) The broker shall have no obligation to place trust funds into an interest-bearing account unless requested to do so and unless all of the conditions in subdivision (d) are met, nor, in any event, if he or she advises the party making the request that the funds will not be placed in an interest-bearing account.

(f) Nothing in subdivision (d) shall preclude the commissioner from prescribing, by regulation, circumstances in which, and conditions under which, a real estate broker is authorized to deposit funds received in trust into an interest-bearing trust fund account.

(g) The broker shall maintain a separate record of the receipt and disposition of all funds described in subdivisions (a) and (b), including any interest earned on the funds.

(h) Upon request of the commissioner, a broker shall furnish to the commissioner an authorization for examination of financial records of those trust fund accounts maintained in a financial institution, in accordance with the procedures set forth in Section 7473 of the Government Code.

(i) As used in this section, “neutral escrow” means an escrow business conducted by a person licensed under Division 6 (commencing with Section 17000) of the Financial Code or by a person described in *paragraph (1) or (3) of* subdivision (a) ~~or (e)~~ of Section 17006 of that code.

SEC. 7. Section 10177 of the Business and Professions Code is amended to read:

10177. The commissioner may suspend or revoke the license of a real estate licensee, or may deny the issuance

1 of a license to an applicant, who has done any of the
2 following, or may suspend or revoke the license of a
3 corporation, or deny the issuance of a license to a
4 corporation, if an officer, director, or person owning or
5 controlling 10 percent or more of the corporation's stock
6 has done any of the following:

7 (a) Procured, or attempted to procure, a real estate
8 license or license renewal, for himself or herself or any
9 salesperson, by fraud, misrepresentation, or deceit, or by
10 making any material misstatement of fact in an
11 application for a real estate license, license renewal, or
12 reinstatement.

13 (b) Entered a plea of guilty or nolo contendere to, or
14 been found guilty of, or been convicted of, a felony or a
15 crime involving moral turpitude, and the time for appeal
16 has elapsed or the judgment of conviction has been
17 affirmed on appeal, irrespective of an order granting
18 probation following that conviction, suspending the
19 imposition of sentence, or of a subsequent order under
20 Section 1203.4 of the Penal Code allowing that licensee to
21 withdraw his or her plea of guilty and to enter a plea of
22 not guilty, or dismissing the accusation or information.

23 (c) Knowingly authorized, directed, connived at, or
24 aided in, the publication, advertisement, distribution, or
25 circulation of any material false statement or
26 representation concerning his or her business, or any
27 business opportunity or any land or subdivision (as
28 defined in Chapter 1 (commencing with Section 11000)
29 of Part 2) offered for sale.

30 (d) Willfully disregarded or violated the Real Estate
31 Law (Part 1 (commencing with Section 10000)) or
32 Chapter 1 (commencing with Section 11000) of Part 2 or
33 the rules and regulations of the commissioner for the
34 administration and enforcement of the Real Estate Law
35 and Chapter 1 (commencing with Section 11000) of Part
36 2.

37 (e) Willfully used the term "realtor" or any trade
38 name or insignia of membership in any real estate
39 organization of which the licensee is not a member.



1 (f) Acted or conducted himself or herself in a manner
 2 ~~which~~ *that* would have warranted the denial of his or her
 3 application for a real estate license, or has either had a
 4 license denied or *had* a license issued by another agency
 5 of this state, another state, or the federal government;
 6 revoked or suspended for acts ~~which~~ *that*, if done by a real
 7 estate licensee, would be grounds for the suspension or
 8 revocation of a California real estate license, if the action
 9 of denial, revocation, or suspension by the other agency
 10 or entity was taken only after giving the licensee or
 11 applicant fair notice of the charges, an opportunity for a
 12 hearing, and other due process protections comparable to
 13 the Administrative Procedure Act (Chapter 3.5
 14 (commencing with Section 11340), Chapter 4
 15 (commencing with Section 11370), and Chapter 5
 16 (commencing with Section 11500) of Part 1 of Division 3
 17 of Title 2 of the Government Code), and only upon an
 18 express finding of a violation of law by the agency or
 19 entity.

20 (g) Demonstrated negligence or incompetence in
 21 performing any act for which he or she is required to hold
 22 a license.

23 (h) As a broker licensee, failed to exercise reasonable
 24 supervision over the activities of his or her salespersons,
 25 or, as the officer designated by a corporate broker
 26 licensee, failed to exercise reasonable supervision and
 27 control of the activities of the corporation for which a real
 28 estate license is required.

29 (i) Has used his or her employment by a governmental
 30 agency in a capacity giving access to records, other than
 31 public records, in a manner that violates the confidential
 32 nature of the records.

33 (j) Engaged in any other conduct, whether of the
 34 same or a different character than specified in this
 35 section, which constitutes fraud or dishonest dealing.

36 (k) Violated any of the terms, conditions, restrictions,
 37 and limitations contained in any order granting a
 38 restricted license.

39 (l) Solicited or induced the sale, lease, or ~~the~~ listing for
 40 sale or lease, of residential property on the ground, wholly

1 or in part, of loss of value, increase in crime, or decline of
2 the quality of the schools; due to the present or
3 prospective entry into the neighborhood of a person or
4 persons of another race, color, religion, ancestry, or
5 national origin.

6 (m) Violated the Franchise Investment Law (Division
7 5 (commencing with Section 31000) of Title 4 of the
8 Corporations Code) or regulations of the Commissioner
9 of Corporations pertaining thereto.

10 (n) Violated the Corporate Securities Law of 1968
11 (Division 1 (commencing with Section 25000) of Title 4
12 of the Corporations ~~Code~~ Code) or the regulations of the
13 Commissioner of Corporations pertaining thereto.

14 (o) Failed to disclose to the buyer of real property, in
15 a transaction in which the licensee is an agent for the
16 buyer, the nature and extent of a licensee's direct or
17 indirect ownership interest in that real property. The
18 direct or indirect ownership *interest* in the property by
19 a person related to the licensee by blood or marriage, by
20 an entity in which the licensee has an ownership interest,
21 or by any other person with whom the licensee ~~occupies~~
22 *has a special relationship* shall be disclosed to the buyer.

23 If a real estate broker that is a corporation has not done
24 any of the foregoing acts, either directly or through its
25 employees, agents, officers, directors, or persons owning
26 or controlling 10 percent or more of the corporation's
27 stock, the commissioner may not deny the issuance of a
28 real estate license to, or suspend or revoke the real estate
29 license of, the corporation, provided that any offending
30 officer, director, or stockholder, who has done any of the
31 foregoing acts individually and not on behalf of the
32 corporation, has been completely disassociated from any
33 affiliation or ownership in the corporation.

34 SEC. 8. Section 10229 of the Business and Professions
35 Code is amended to read:

36 10229. Any transaction that involves the sale of or
37 offer to sell a series of notes secured directly by an interest
38 in the same real property, or the sale of undivided
39 interests in a note secured directly by real property
40 equivalent to a series transaction, shall comply with all of



the following, except as provided in paragraph (4) of subdivision (i), the terms “sale” and “offer to sell,” as used in this section, shall have the same meaning as set forth in Section 25017 of the Corporations Code and include the acts of negotiating and arranging the transaction:

(a) A notice in the following form and containing the following information shall be filed with the commissioner within 30 days after the first transaction and within 30 days of any material change in the information required in the notice:

TO: Real Estate Commissioner
Mortgage Loan Section
2201 Broadway
Sacramento, CA 95818

This notice is filed pursuant to Section 10229 of the Business and Professions Code.

☐ Original Notice ☐ Amended Notice

1. Name of Broker conducting transaction under Section 10229:

2. Firm name (if different from “1”):

3. Street address (main location):

# and Street	City	State	ZIP Code
--------------	------	-------	----------

4. Mailing address (if different from “3”):



- 1 5. Servicing Agent: Identify the person or persons who will act
2 as the servicing agent in transactions pursuant to Section
3 10229 (including the undersigned Broker if that is the
4 case):

5
6 _____
7 _____

- 8
9 6. Inspection of trust account (before answering this question,
10 review the provisions of paragraph (3) of subdivision (j) of
11 Section 10229).

12
13 CHECK ONLY ONE OF THE FOLLOWING:

- 14
15 () The undersigned Broker is (or expects to be) required to file
16 reports of inspection of its trust account(s) with the Real Estate
17 Commissioner pursuant to paragraph (3) of subdivision (j) of
18 Section 10229.

- 19
20 () The undersigned Broker is NOT (or does NOT expect to be)
21 required to file reports of inspection of its trust account(s) with
22 the Real Estate Commissioner pursuant to paragraph (3) of
23 subdivision (j) of Section 10229.

- 24
25 7. Signature. The contents of this notice are true and correct.

26
27 _____
28 Date

27 _____
28 Type Name of Broker

29
30 _____
31 Signature of Broker or of Designated Officer
32 of Corporate Broker

33
34 _____
35 Type Name of Person(s) Signing This Notice

36
37 NOTE: AN AMENDED NOTICE MUST BE FILED
38 BY THE BROKER WITHIN 30 DAYS OF ANY
39 MATERIAL CHANGE IN THE INFORMATION
40 REQUIRED TO BE SET FORTH HEREIN.

1
2 (b) All advertising employed for transactions under
3 this section shall (1) show the name of the broker and (2)
4 comply with ~~Section 260.302 of Title 10 of the California~~
5 ~~Code of Regulations~~, Section 10235 of the Business and
6 Professions Code, and ~~Section~~ *Sections 260.302 and 2848*
7 of Title 10 of the California Code of Regulations. Brokers
8 and their agents are cautioned that a reference to a
9 prospective investor that a transaction is conducted
10 under this section may be deemed misleading or
11 deceptive if this representation may reasonably be
12 construed by the investor as an implication of merit or
13 approval of the transaction.

14 (c) The real property directly securing the notes or
15 interests is located in this state, the note or notes are not
16 by their terms subject to subordination to any
17 subsequently created deed of trust upon the real
18 property, and the note or notes are not promotional notes
19 secured by liens on separate parcels of real property in
20 one subdivision or in contiguous subdivisions. For
21 purposes of this subdivision, a promotional note means a
22 promissory note secured by a trust deed, executed on
23 unimproved real property or executed after construction
24 of an improvement of the property but before the first
25 purchase of the property as so improved, or executed as
26 a means of financing the first purchase of the property as
27 so improved, ~~and which~~ *that is* subordinate, or ~~which~~ by
28 its terms may become subordinate, to any other trust
29 deed on the property. However, the term “promotional
30 note” does not include either of the following:

31 (1) A note that was executed in excess of three years
32 prior to being offered for sale.

33 (2) A note secured by a first trust deed on real
34 property in a subdivision, ~~which~~ *that* evidences a bona
35 fide loan made in connection with the financing of the
36 usual cost of the development in a residential,
37 commercial, or industrial building or buildings on the
38 property under a written agreement providing for the
39 disbursement of the loan funds as costs are incurred or in
40 relation to the progress of the work and providing for title

1 insurance ensuring the priority of the security as against
2 mechanic's and materialmen's liens or for the final
3 disbursement of at least 10 percent of the loan funds after
4 the expiration of the period ~~of~~ *for* the filing of mechanic's
5 and materialmen's liens.

6 (d) (1) The notes or interests are sold by or through
7 a real estate broker, as principal or agent. At the time the
8 interests are originally sold or assigned, neither the
9 broker nor an affiliate of the broker shall have an interest
10 as owner, lessor, or developer of the property securing
11 the loan, or any contractual right to acquire, lease, or
12 develop the property securing the loan. This provision
13 ~~shall~~ *does* not prohibit a broker from conducting the
14 following transactions if, in either case, the disclosure
15 statement furnished by the broker pursuant to
16 subdivision (k) discloses the interest of the broker or
17 affiliate in the transaction and the circumstances under
18 which the broker or affiliate acquired the interest:

19 (A) A transaction in which the broker or an affiliate of
20 the broker is acquiring the property pursuant to a
21 foreclosure under, or sale pursuant to, a deed of trust
22 securing a note for which the broker is the servicing agent
23 ~~or which~~ *that* the broker sold to the holder or holders.

24 (B) A transaction in which the broker or an affiliate of
25 the broker is reselling from inventory property acquired
26 by the broker pursuant to a foreclosure under, or sale
27 pursuant to, a deed of trust securing a note for which the
28 broker is the servicing agent or ~~which~~ *that* the broker sold
29 to the holder or holders.

30 (2) For the purposes of this subdivision, the following
31 definitions apply:

32 (A) "Broker" means a person licensed as a broker
33 ~~under any of the provisions of this part.~~

34 (B) "Affiliate" means a person controlled by,
35 controlling, or under common control with, the broker.

36 (e) (1) The notes or interests shall not be sold to more
37 than 10 persons, each of whom meets one or both of the
38 qualifications of income or net worth set forth below and
39 ~~who~~ signs a statement, which shall be retained by the
40 broker for four years, conforming to the following:

Transaction Identifier: _____

Name of Purchaser: _____ Date: _____

Check either one of the following, if true::

() My investment in the transaction does not exceed 10% of my net worth, exclusive of home, furnishings, and automobiles.

() My investment in the transaction does not exceed 10% of my adjusted gross income for federal income tax purposes for my last tax year; or, in the alternative, as estimated for the current year.

Signature

(2) The number of offerees shall not be considered for the purposes of this section.

(3) A husband and wife and their dependents, and an individual and his or her dependents, shall be counted as one person.

(4) A retirement plan, trust, business trust, corporation, or other entity that is wholly owned by an individual; and the individual's spouse; or the individual's dependents, or any combination thereof, shall not be counted separately from the individual, but the investments of these entities shall be aggregated with those of the individual for the purposes of the statement required by paragraph (1). If the investments of any entities are required to be aggregated under this subdivision, the adjusted gross income or net worth of these entities may also be aggregated with the net worth, ~~or both,~~ income, *or both*, of the individual.

(5) The "institutional investors" enumerated in subdivision (i) of Section 25102 or subdivision (c) of Section 25104 of the Corporations Code, or in a rule adopted pursuant thereto, shall not be counted.

(f) The notes or interests of the purchasers shall be identical in their underlying terms, including the right to direct or require foreclosure, rights to and rate of interest,

1 and other incidents of being a lender, and the sale to each
 2 purchaser pursuant to this section shall be upon the same
 3 terms, subject to adjustment for the face or principal
 4 amount or percentage interest purchased and for interest
 5 earned or accrued. This subdivision ~~shall~~ *does* not
 6 preclude different selling prices for interests to the extent
 7 that these differences are reasonably related to changes
 8 in the market value of the loan occurring between the
 9 sales of these interests. The interest of each purchaser
 10 shall be recorded.

11 (g) (1) Except as provided in paragraph (2), the
 12 aggregate principal amount of the notes or interests sold,
 13 together with the unpaid principal amount of any
 14 encumbrances upon the real property senior thereto,
 15 shall not exceed the following percentages of the current
 16 market value of the real property, as determined in
 17 writing by the broker or appraiser pursuant to Section
 18 10232.6, plus the amount for which the payment of
 19 principal and interest in excess of the percentage of
 20 current market value is insured for the benefit of the
 21 holders of the notes or interests by an insurer admitted to
 22 do business in this state by the Insurance Commissioner:

- | | | | |
|----|-----|---|-----|
| 24 | (A) | Single-family residence, owner-occupied | 80% |
| 25 | (B) | Single-family residence, not owner-occupied | 75% |
| 26 | (C) | Commercial and income-producing properties | 65% |
| 27 | (D) | Single-family residentially zone lot or parcel which | |
| 28 | | has installed off-site <i>offsite</i> improvements including | |
| 29 | | drainage, curbs, gutters, sidewalks, paved roads, and | |
| 30 | | utilities as mandated by the political subdivision | |
| 31 | | having jurisdiction over the lot or parcel | 65% |
| 32 | (E) | Land which <i>that</i> has been zoned for (and if | |
| 33 | | required, approved for subdivision as) commercial | |
| 34 | | or residential development | 50% |
| 35 | (F) | Other real property | 35% |

36
 37 (2) The percentage amounts specified in paragraph
 38 (1) may be exceeded when and to the extent that the
 39 broker determines that the encumbrance of the property
 40 in excess of these percentages is reasonable and prudent

1 considering all relevant factors pertaining to the real
2 property. However, in no event shall the aggregate
3 principal amount of the notes or interests sold, together
4 with the unpaid principal amount of any encumbrances
5 upon the property senior thereto, exceed 80 percent of
6 the current fair market value of improved real property
7 or 50 percent of the current fair market value of
8 unimproved real property, except in the case of a
9 single-family zoned lot or parcel as defined in paragraph
10 (1), which shall not exceed 65 percent of the current fair
11 market value of that lot or parcel, plus the amount
12 insured as specified in paragraph (1). A written
13 statement shall be prepared by the broker that sets forth
14 the material considerations and facts that the broker
15 relies upon for his or her determination, which shall be
16 retained as a part of the broker's record of the transaction.
17 Either a copy of the statement or the information
18 contained therein shall be included in the disclosures
19 required pursuant to subdivision (k).

20 (3) A copy of the appraisal or the broker's evaluation
21 shall be delivered to each purchaser. The broker shall
22 advise purchasers of their right to receive a copy. For
23 purposes of this paragraph, "appraisal" means a written
24 estimate of value based upon the assembling, analyzing,
25 and reconciling of facts and value indicators for the real
26 property in question. A broker shall not purport to make
27 an appraisal unless the person so employed is qualified on
28 the basis of special training, preparation, or experience.

29 (h) The documentation of the transaction shall
30 require that (1) a default upon any interest or note is a
31 default upon all interests or notes; and (2) the holders of
32 more than ~~fifty~~ 50 percent of the record beneficial
33 interests of the notes or interests may ~~be governed by~~
34 *govern* the actions to be taken on behalf of all holders in
35 accordance with Section 2941.9 of the Civil Code in the
36 event of default or foreclosure for matters that require
37 direction or approval of the holders, including
38 designation of the broker, servicing agent, or other
39 person acting on their behalf, and the sale, encumbrance,
40 or lease of real property owned by the holders resulting

1 from foreclosure or receipt of a deed in lieu of foreclosure.
2 The terms called for by this subdivision may be included
3 in the deed of trust, in the assignment of interests, or in
4 any other documentation as is necessary or appropriate
5 to make them binding on the parties.

6 (i) (1) The broker shall not accept any purchase or
7 loan funds or other consideration from a prospective
8 lender or purchaser, or directly or indirectly cause the
9 funds or other consideration to be deposited in an escrow
10 or trust account, except as to a specific loan or note
11 secured by a deed of trust that the broker owns, is
12 authorized to negotiate, or is unconditionally obligated to
13 buy.

14 (2) All funds received by the broker from the
15 purchasers or lenders shall be handled in accordance with
16 Section 10145 for disbursement to the persons thereto
17 entitled upon recordation of the interests of the
18 purchasers or lenders in the note and deed of trust. No
19 provision of this section shall be construed as modifying
20 or superseding applicable law regulating the escrow
21 holder in any transaction or the handling of the escrow
22 account.

23 (3) The books and records of the broker or servicing
24 agent, or both, shall be maintained in a manner that
25 readily identifies transactions under this section and the
26 receipt and disbursement of funds in connection with
27 these transactions.

28 (4) If required by paragraph (3) of subdivision (j), the
29 review by the independent certified public accountant
30 shall include a sample of transactions, as reflected in the
31 records of the trust account required pursuant to
32 paragraph (1) of subdivision (j), and the bank statements
33 and supporting documents. These documents shall be
34 reviewed for compliance with this section with respect to
35 the handling and distribution of funds. The sample shall
36 be selected at random by the accountant from all these
37 transactions and shall consist of the following: (A) three
38 sales made or 5 percent of the sales made pursuant to this
39 section during the period for which the examination is
40 conducted, whichever is greater, and (B) 10 payments

1 processed or 2 percent of payments processed under this
 2 exemption during the period for which the examination
 3 is conducted, whichever is greater. The transaction that
 4 constitutes a “sale,” for purposes of this subdivision, is the
 5 series of transactions by which a series of notes of a maker,
 6 or the interests in the note of a maker, are sold or issued
 7 to their various purchasers under this section, including
 8 all receipts and disbursements in that process of funds
 9 received from the purchasers or lenders. The transaction
 10 that constitutes a “payment,” for the purposes of this
 11 subdivision, is the receipt of a payment from the person
 12 obligated on the note, or from some other person on
 13 behalf of the person so obligated, including the broker or
 14 servicing agent, and the distribution of that payment to
 15 the persons entitled thereto. If a payment involves an
 16 advance paid by the broker or servicing agent as the
 17 result of a dishonored check, the inspection shall identify
 18 the source of funds from which the payment was made or,
 19 in the alternative, the steps that are reasonably necessary
 20 to determine that there was not a disbursement of trust
 21 funds. ~~The specific provisions of this section, compliance~~
 22 ~~with which is to be inspected by the accountant, are shall~~
 23 *inspect for compliance with the following specific*
 24 *provisions of this section: paragraphs (1), (2), and (3) of*
 25 *subdivision (i) and paragraphs (1) and (2) of subdivision*
 26 *(j).*

27 (5) Within 30 days of the close of the period for which
 28 the report is made, or within any additional time as the
 29 commissioner may in writing allow in a particular case,
 30 the accountant shall forward to the broker or servicing
 31 agent, as the case may be, and to the commissioner, the
 32 report of the accountant, stating that the inspection was
 33 performed in accordance with this section, listing the
 34 sales and the payments examined, specifying the nature
 35 of the deficiencies, if any, noted by the accountant with
 36 respect to each sale or payment, together with any
 37 further information as the accountant may wish to
 38 include, such as corrective steps taken with respect to any
 39 deficiency so noted, or stating that no deficiencies were
 40 observed. If the broker meets the threshold criteria of

1 Section 10232, the report of the accountant shall be
2 submitted as part of the quarterly reports required under
3 Section 10232.25.

4 (j) The notes or interests shall be sold subject to a
5 written agreement that obligates a licensed real estate
6 broker, or a person exempted from the licensing
7 requirement for real estate brokers under Chapter 3
8 (commencing with Section 10130) of Part 1 of Division 4,
9 to act as agent for the purchasers or lenders to service the
10 note or notes and deed of trust, including the receipt and
11 transmission of payments and the institution of
12 foreclosure proceedings in the event of a default. A copy
13 of this servicing agreement shall be delivered to each
14 purchaser. The broker shall offer to the lenders or
15 purchasers the services of the broker or one or more
16 affiliates of the broker, or both, as servicing agent for each
17 transaction conducted pursuant to this section. The
18 agreement shall require all of the following:

19 (1) (A) That payments received on the note or notes
20 be ~~immediately~~ deposited *immediately* to a trust account
21 maintained in accordance with *this section and with* the
22 provisions ~~of law and rules~~ for trust accounts of licensed
23 real estate brokers contained in Section 10145 ~~of this code~~
24 and Article 15 (commencing with Section ~~2830~~) 2830.1)
25 of Chapter 6 of Title 10 of the California Code of
26 Regulations ~~and in accordance with this section~~.

27 (B) That ~~these~~ payments *deposited pursuant to*
28 *subparagraph (A)* shall not be commingled with the
29 assets of the servicing agent or used for any transaction
30 other than the transaction for which the funds are
31 received.

32 (2) That payments received on the note or notes shall
33 be transmitted to the purchasers or lenders pro rata
34 according to their respective interests within 25 days
35 after receipt thereof by the agent. If the source for the
36 payment is not the maker of the note, the agent shall
37 inform the purchasers or lenders of the source for
38 payment. A broker or servicing agent who transmits to
39 the purchaser or lenders the broker's or servicing agent's
40 own funds to cover payments due from the borrower but

unpaid as a result of a dishonored check may recover the amount of the advances from the trust fund when the past due payment is received. However, ~~nothing contained in this section shall~~ *does not* authorize the broker, servicing agent, or any other person to issue, or to engage in any practice constituting, any guarantee, or to engage in the practice of advancing payments on behalf of the borrower.

(3) If the broker, directly or through an affiliate, is the servicing agent for notes or interests sold pursuant to this section upon which the payments due during any period of three consecutive months in the aggregate exceed one hundred twenty-five thousand dollars (\$125,000) or the number of persons entitled to the payments exceeds 120, the trust account or accounts of that broker or affiliate shall be inspected *by an independent certified public accountant* at no less than three-month intervals during ~~which the time the volume is maintained, by an independent certified public accountant.~~ Within 30 days after the close of the period for which the review is made, the report of the accountant shall be forwarded as provided in paragraph (5) of subdivision (i). If the broker is required to file an annual report pursuant to subdivision (n) or Section 10232.2, the quarterly report pursuant to this subdivision need not be filed for the last quarter of the year for which the annual report is made. For the purposes of this subdivision, an affiliate of a broker is any person controlled by, controlling, or under common control with the broker.

(4) Unless the servicing agent will receive notice pursuant to Section 2924b of the Civil Code, the servicing agent shall file a request for notice of default upon any prior encumbrances and promptly notify the purchasers or lenders of any default on the prior encumbrances or on the note or notes subject to the servicing agreement.

(5) The servicing agent shall promptly forward copies of the following to each purchaser or lender:

(A) Any notice of trustee sale filed on behalf of the purchasers or lenders.

1 (B) Any request for reconveyance of the deed of trust
2 received on behalf of the purchasers or lenders.

3 (k) The broker shall disclose in writing to each
4 purchaser or lender the material facts concerning the
5 transaction on a disclosure form adopted or approved by
6 the commissioner pursuant to Section 10232.5, subject to
7 the following:

8 (1) The disclosure form shall include a description of
9 the terms upon which the note and deed of trust are being
10 sold, including the terms of the undivided interests being
11 offered therein, including the following:

12 (A) In the case of the sale of an existing note:

13 (i) The aggregate sale price of the note.

14 (ii) The percent of the premium over or discount from
15 the principal balance plus accrued but unpaid interest.

16 (iii) The effective rate of return to the purchasers if
17 the note is paid according to its terms.

18 (iv) The name and address of the escrowholder for the
19 transaction.

20 (v) A description of, and the estimated amount of,
21 each cost payable by the seller in connection with the sale
22 and a description of, and the estimated amount of, each
23 cost payable by the purchasers in connection with the
24 sale.

25 (B) In the case of the origination of a note:

26 (i) The name and address of the escrowholder for the
27 transaction.

28 (ii) The anticipated closing date.

29 (iii) A description of, and the estimated amount of,
30 each cost payable by the borrower in connection with the
31 loan and a description of, and the estimated amount of,
32 each cost payable by the lenders in connection with the
33 loan.

34 (2) A copy of the written statement or information
35 contained therein, as required ~~under~~ by paragraph (2) of
36 subdivision (g), shall be included in the disclosure form.

37 (3) Any interest of the broker or affiliate in the
38 transaction, as described in subdivision (d), shall be
39 included with the disclosure form.

(4) When the particular circumstances of a transaction make information not specified in the disclosure form material; or essential to ~~make~~ *keep* the information provided in the form ~~not from being~~ misleading, and the other information is known to the broker, the other information shall also be provided by the broker.

(l) The broker or servicing agent shall furnish any purchaser of a note or interest, upon request, with the names and addresses of the purchasers of the other notes or interests in the loan.

(m) No agreement in connection with a transaction covered by this section shall grant to the real estate broker, the servicing agent, or any affiliate of the broker or agent the option or election to acquire the interests of the purchasers or lenders or to acquire the real property securing the interests. This subdivision shall not prohibit the broker or affiliate from acquiring the interests, with the consent of the purchasers or lenders whose interests are being purchased, or the property, with the consent of the purchasers or lenders, if the consent is given at the time of the acquisition.

(n) Each broker who conducts transactions under this section and meets the criteria of paragraph (3) of subdivision (j) shall file with the commissioner an annual report of a review of its trust account. The report shall be prepared and filed in accordance with subdivision (a) of Section 10232.2 and the rules and procedures thereunder of the commissioner. That report shall cover the broker's transactions under this section and, if the broker also meets the threshold criteria set forth in Section 10232, the broker's transactions subject to that section shall be included as well.

(o) Each broker conducting transactions pursuant to this section ~~and~~ who meets the criteria of paragraph (3) of subdivision (j) shall file with the commissioner a report of the transactions ~~which~~ *that* is prepared in accordance with subdivision (c) of Section 10232.2. If the broker also meets the threshold criteria of Section 10232, the report shall include the transactions subject to that section as

1 well. This report shall be confidential pursuant to
2 subdivision (f) of Section 10232.2.

3 (p) The jurisdiction of the Commissioner of
4 Corporations under the Corporate Securities Law of 1968
5 shall be neither limited nor expanded by ~~the provisions~~
6 ~~of the~~ *this* section. Nothing in this section shall be
7 construed to supersede or restrict the application of the
8 Corporate Securities Law of 1968. A transaction under
9 this section shall not be construed to be a transaction
10 involving the issuance of securities subject to
11 authorization by the Real Estate Commissioner under
12 subdivision (e) of Section 25100 of the Corporations
13 Code.

14 (q) Nothing in this section shall be construed to
15 change the agency relationships between the parties
16 where they exist or to limit in any manner the fiduciary
17 duty of brokers to borrowers, lenders, and purchasers of
18 notes or interests; in transactions subject to this section.

19 SEC. 9. Section 10232 of the Business and Professions
20 Code is amended to read:

21 10232. (a) Except as otherwise expressly provided,
22 ~~the provisions of~~ Sections 10232.2, 10232.25, 10233, and
23 10236.6 are applicable to every real estate broker who
24 intends or reasonably expects in a successive 12 months
25 to do any of the following:

26 (1) Negotiate a combination of 10 or more of the
27 following transactions pursuant to subdivision (d) or (e)
28 of Section 10131 or Section 10131.1 in an aggregate
29 amount of more than one million dollars (\$1,000,000):

30 (A) Loans secured directly or collaterally by liens on
31 real property or on business opportunities as agent for
32 another or others.

33 (B) Sales or exchanges of real property sales contracts
34 or promissory notes secured directly or collaterally by
35 liens on real property or on business opportunities as
36 agent for another or others.

37 (C) Sales or exchanges of real property sales contracts
38 or promissory notes secured directly or collaterally by
39 liens on real property as the owner of those notes or
40 contracts.



(2) Make collections of payments in an aggregate amount of two hundred fifty thousand dollars (\$250,000) or more on behalf of owners of promissory notes secured directly or collaterally by liens on real property, owners of real property sales contracts, or both.

(3) Make collections of payments in an aggregate amount of two hundred fifty thousand dollars (\$250,000) or more on behalf of obligors of promissory notes secured directly or collaterally by liens on real property, lenders of real property sales contracts, or both.

Persons under common management, direction, or control in conducting the activities enumerated above shall be considered as one person for the purpose of applying the above criteria.

(b) The negotiation of a combination of two or more new loans and sales or exchanges of existing promissory notes and real property sales contracts of an aggregate amount of more than two hundred fifty thousand dollars (\$250,000) in any three successive months or a combination of five or more new loans and sales or exchanges of existing promissory notes and real property sales contracts of an aggregate amount of more than five hundred thousand dollars (\$500,000) in any successive six months shall create a rebuttable presumption that the broker intends to negotiate new loans and sales and exchanges of an aggregate amount that will meet the criteria of subdivision (a).

(c) In determining the applicability of Sections 10232.2, 10232.25, 10233, and 10236.6, loans or sales negotiated by a broker, or for which a broker collects payments or provides other servicing for the owner of the note or contract, shall not be counted in determining whether the broker meets the criteria of subdivisions (a) and (b) if any of the following apply:

(1) The lender or purchaser is any of the following:

(A) The Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, and the ~~Veterans' Administration~~ *United States Department of Veterans Affairs*.

1 (B) A bank or subsidiary thereof, bank holding
2 company or subsidiary thereof, trust company, savings
3 bank or savings and loan association or subsidiary thereof,
4 savings bank or savings association holding company or
5 subsidiary thereof, credit union, industrial bank or
6 industrial loan company, commercial finance lender,
7 personal property broker, consumer finance lender, or
8 insurer doing business under the authority of, and in
9 accordance with, the laws of this state, any other state, or
10 of the United States relating to banks, trust companies,
11 savings banks or savings associations, credit unions,
12 industrial banks or industrial loan companies, commercial
13 finance lenders, or insurers, as evidenced by a license,
14 certificate, or charter issued by the United States or a
15 state, district, territory, or commonwealth of the United
16 States.

17 (C) Trustees of a pension, profit-sharing, or welfare
18 fund, if the pension, profit-sharing, or welfare fund has a
19 net worth of not less than fifteen million dollars
20 (\$15,000,000).

21 (D) A corporation with outstanding securities
22 registered under Section 12 of the Securities Exchange
23 Act of 1934 or a wholly owned subsidiary of that
24 corporation.

25 (E) A syndication or other combination of any of the
26 entities specified in subparagraph (A), (B), (C), or (D)
27 that is organized to purchase the promissory note.

28 (F) The California Housing Finance Agency or a local
29 housing finance agency organized under the Health and
30 Safety Code.

31 (G) A licensed residential mortgage lender or servicer
32 acting under the authority of that license.

33 (H) An institutional investor that issues
34 mortgage-backed securities, as specified in paragraph
35 (11) of subdivision (i) of Section 50003 of the Financial
36 Code.

37 (I) A licensed real estate broker selling all or part of
38 the loan, the note, or the contract to a lender or purchaser
39 specified in subparagraphs (A) to (H), inclusive, ~~of this~~
40 ~~subdivision.~~

(2) The loan or sale is negotiated, or the loan or contract is being serviced for the owner, under authority of a permit issued pursuant to ~~the provisions of Article 6 (commencing with Section 10237)~~ or applicable provisions of the Corporate Securities Law of 1968 ~~(Section 25000 et seq. (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code).~~

(3) The transaction is subject to the requirements of Article 3 (commencing with Section 2956) of Chapter 2 of Title 14 of Part 4 of *Division 3* of the Civil Code.

(d) If two or more real estate brokers who are not under common management, direction, or control, cooperate in the negotiation of a loan or the sale or exchange of a promissory note or real property sales contract and share in the compensation for their services, the dollar amount of the transaction shall be allocated according to the ratio that the compensation received by each broker bears to the total compensation received by all brokers for their services in negotiating the loan or sale or exchange.

(e) A real estate broker who ~~on the effective date of this section satisfies~~ *meets any of* the criteria of subdivision (a) or (b) shall, ~~within 30 days thereafter, notify the Department of Real Estate in writing of that fact. A broker who first meets any of the criteria of subdivision (a) or (b) after January 1, 1982, shall~~ notify the department in writing within 30 days after that determination is made.

SEC. 10. Section 11018.12 of the Business and Professions Code is amended to read:

11018.12. (a) The commissioner may issue a conditional public report for a subdivision specified in Section 11004.5 if the requirements of subdivision (e) are met, all deficiencies and substantive inadequacies in the documents that are required to make an application for a final public report for the subdivision substantially complete have been corrected, the material elements of the setup of the offering to be made under the authority of the conditional public report have been established, and all requirements for the issuance of a public report set

1 forth in the regulations of the commissioner have been
2 satisfied, except for one or more of the following
3 requirements, as applicable:

4 (1) A final map has not been recorded.

5 (2) A condominium plan pursuant to subdivision (e)
6 of Section 1351 of the Civil Code has not been recorded.

7 (3) A declaration of covenants, conditions, and
8 restrictions pursuant to Section 1353 of the Civil Code has
9 not been recorded.

10 (4) A declaration of annexation has not been recorded.

11 (5) A recorded subordination of existing liens to the
12 declaration of covenants, conditions, and restrictions or
13 declaration of annexation, or escrow instructions to effect
14 recordation prior to the first sale, are lacking.

15 (6) Filed articles of incorporation are lacking.

16 (7) A current preliminary report of a licensed title
17 insurance company issued after filing of the final map and
18 recording of the declaration covering all subdivision
19 interests to be included in the public report has not been
20 provided.

21 (8) Other requirements the commissioner determines
22 are likely to be timely satisfied by the applicant,
23 notwithstanding the fact that the failure to meet these
24 requirements makes the application qualitatively
25 incomplete.

26 (b) The commissioner may issue a conditional public
27 report for a subdivision not referred to or specified in
28 Section 11000.1 or 11004.5 if the requirements of
29 subdivision (e) are met, all deficiencies and substantive
30 inadequacies in the documents that are required to make
31 an application for a final public report for the subdivision
32 substantially complete have been corrected, the material
33 elements of the setup of the offering to be made under the
34 authority of the conditional public report have been
35 established, and all requirements for issuance of a public
36 report set forth in the regulations of the commissioner
37 have been satisfied, except for one or more of the
38 following requirements, as applicable:

39 (1) A final map has not been recorded.

1 (2) A declaration of covenants, conditions, and
2 restrictions has not been recorded.

3 (3) A current preliminary report of a licensed title
4 insurance company issued after filing of the final map and
5 recording of the declaration covering all subdivision
6 interests to be included in the public report has not been
7 provided.

8 (4) Other requirements the commissioner determines
9 are likely to be timely satisfied by the applicant,
10 notwithstanding the fact that the failure to meet these
11 requirements makes the application qualitatively
12 incomplete.

13 (c) A decision by the commissioner to not issue a
14 conditional public report shall be noticed in writing to the
15 applicant within five business days and that notice shall
16 specifically state the reasons why the report is not being
17 issued.

18 (d) Notwithstanding the provisions of Section 11018.2,
19 a person may sell or lease, or offer for sale or lease, lots or
20 parcels in a subdivision pursuant to a conditional public
21 report if, as a condition of the sale or lease or offer for sale
22 or lease, delivery of legal title or other interest contracted
23 for will not take place until issuance of a public report and
24 provided that the requirements of subdivision (e) are
25 met.

26 (e) (1) Evidence shall be supplied that all purchase
27 money will be deposited in compliance with subdivision
28 (a) of Section 11013.2 or subdivision (a) of Section
29 11013.4, and in the case of a subdivision referred to in
30 subdivision (a) *of this section*, evidence ~~is~~ *shall be* given
31 of compliance with paragraphs (1) and (2) of subdivision
32 (a) of Section 11018.5.

33 (2) A description of the nature of the transaction shall
34 be supplied.

35 (3) Provision shall be made for the return of the entire
36 sum of money paid or advanced by the purchaser if a
37 subdivision public report has not been issued within six
38 months of the date of issuance of the conditional public
39 report or the purchaser is dissatisfied with the public
40 report because of a change pursuant to Section 11012.

(f) A subdivider, principal, or his or her agent shall provide a prospective purchaser a copy of the conditional public report and a written statement including all of the following:

(1) Specification of the information required for issuance of a public report.

(2) Specification of the information required in the public report that is not available in the conditional public report, along with a statement of the reasons why that information is not available at the time of issuance of the conditional public report.

(3) A statement that no person acting as a principal or agent shall sell or lease, or offer for sale or lease, lots or parcels in a subdivision for which a conditional public report has been issued except as provided in this article.

(4) Specification of the requirements of subdivision (e).

(g) The prospective purchaser shall sign a receipt that he or she has received and has read the conditional public report and the written statement provided pursuant to subdivision (f).

(h) The term of a conditional public report shall not exceed six months, and may be renewed for one additional term of six months if the commissioner determines that the requirements for issuance of a public report are likely to be satisfied during the renewal term.

SEC. 11. Section 17539.15 of the Business and Professions Code is amended to read:

17539.15. (a) Solicitation materials containing sweepstakes entry materials shall not represent, taking into account the context in which the representation is made, including, without limitation, emphasis, print, size, color, location, and presentation of the representation and any qualifying language, that a person is a winner or has already won a prize unless that person has in fact won a prize. If the representation is made on or visible through the mailing envelope containing the sweepstakes materials, the context in which the representation is to be considered, including any qualifying language, shall be

1 limited to ~~that which~~ *what* appears on, appears from, or
2 is visible through the mailing envelope.

3 (b) Solicitation materials containing sweepstakes
4 entry materials shall include a prominent statement of
5 the ~~no purchase necessary~~ *no-purchase-necessary*
6 message, in readily understandable terms, in the official
7 rules included in those solicitation materials; and, if the
8 official rules do not appear thereon, on the entry-order
9 device included in those solicitation materials. The ~~no~~
10 ~~purchase necessary~~ *no-purchase-necessary* message
11 included in the official rules shall be set out in a separate
12 paragraph in the official rules and be printed in capital
13 letters in contrasting typeface not smaller than the largest
14 typeface used in the text of the official rules.

15 (c) Sweepstakes entries not accompanied by an order
16 for products or services shall not ~~to~~ be subjected to any
17 disability or disadvantage in the winner selection process
18 to which an entry accompanied by an order for products
19 or services would not be subject.

20 (d) Sweepstakes materials containing sweepstakes
21 entry materials shall not represent that an entry in the
22 promotional sweepstakes accompanied by an order for
23 products or services; will be eligible to receive additional
24 prizes or be more likely to win than an entry not
25 accompanied by an order for products or services; or that
26 an entry not accompanied by an order for products or
27 services will have a reduced chance of winning a prize in
28 the promotional sweepstakes.

29 (e) For purposes of this section:

30 (1) ~~“No purchase necessary”~~ *“No-purchase-necessary*
31 *message”* means a statement to the effect that no
32 purchase is necessary as a condition of entering the
33 promotional sweepstakes.

34 (2) *“Official rules”* means the formal printed
35 statement, however designated, of the rules for the
36 promotional sweepstakes appearing in the solicitation
37 materials. The official rules shall be prominently
38 identified and all references thereto in any solicitation
39 materials shall consistently use the designation for the
40 official rules that appears in those materials. Each

1 sweepstakes solicitation shall contain a copy of the official
2 rules.

3 SEC. 12. Section 17550.14 of the Business and
4 Professions Code is amended to read:

5 17550.14. (a) The seller of travel has an obligation
6 either to provide the air or sea transportation or travel
7 services purchased by the passenger; or to make a refund
8 as provided by this section. The seller of travel shall
9 return to the passenger all moneys paid for air or sea
10 transportation or travel services not actually provided to
11 the passenger, within either of the following periods,
12 whichever is earlier:

13 (1) Thirty days ~~of~~ *from* one of the following dates:

14 (A) The scheduled date of departure.

15 (B) The day the passenger requests a refund.

16 (C) The day of cancellation by the seller of travel.

17 (2) Three days from the day the seller of travel is first
18 unable to provide the air or sea transportation or travel
19 services.

20 As used in this section, “unable to provide” includes,
21 but is not limited to, any day on which the passenger’s
22 funds are not in the trust account required by Section
23 17550.15 and subdivision (g) of Section 17750.21; or the
24 funds necessary to provide the passenger’s transportation
25 or travel services have been disbursed other than as
26 allowed by Section 17550.15 or subdivision (a) of Section
27 17550.16.

28 (b) ~~Where~~ *If* the seller of travel has disbursed the
29 passenger’s funds pursuant to paragraph (1), (2), (3), or
30 (4) of subdivision (c) of Section 17550.15, the seller of
31 travel may, instead of providing a refund, provide to the
32 passenger a written statement accompanied by bank
33 records establishing that the passenger’s funds were
34 disbursed as required by those provisions and, if disbursed
35 to a seller of travel, proof of current registration of that
36 seller of travel. A seller of travel who is exempt from the
37 requirements of Section 17550.15 pursuant to subdivision
38 (a) of Section 17550.16 and who is in compliance with
39 subdivision (a) of Section 17550.16 may comply with this
40 section by maintaining and providing to the passenger

1 documentary proof of disbursement in compliance with
2 subdivision (a) of Section 17550.16, and proof of current;
3 registration of the seller of travel to whom the funds were
4 disbursed, which registration shall note that the
5 registered seller of travel either has a trust account in
6 compliance with Section 17550.15, or is exempt from the
7 requirements of Section 17550.15 pursuant to subdivision
8 (b) or (c) of Section 17550.16.

9 (c) If terms and conditions relating to a refund upon
10 cancellation by the passenger have been disclosed and
11 agreed to by the passenger; and the passenger elects to
12 cancel for any reason other than a seller of travel being
13 unable to provide the air or sea transportation or travel
14 services purchased, the making of a refund in accordance
15 with those terms and conditions shall be deemed to
16 constitute compliance with this section.

17 (d) Any material misrepresentation by the seller of
18 travel shall be deemed to be a violation of this article and
19 cancellation by the seller of travel, necessitating a refund
20 as required by subdivision (a).

21 SEC. 13. Section 17550.16 of the Business and
22 Professions Code is amended to read:

23 17550.16. (a) A seller of travel is exempt from the
24 requirements of subdivisions (a) to (f), inclusive, of
25 Section 17550.15 for all transactions in which the seller of
26 travel is in compliance with paragraphs (1) to (6),
27 inclusive, or with paragraph (7).

28 (1) The seller of travel sells, provides, furnishes,
29 contracts for, or arranges air or sea transportation in
30 transactions with persons in California, only from
31 locations in California, and the air or sea transportation or
32 travel services are to be furnished by (A) a registered
33 seller of travel that is in compliance with this article and
34 Article 2.7 (commencing with Section 17550.35) or (B) an
35 air or sea carrier.

36 (2) The seller of travel forwards the passenger's funds,
37 without offsetting or reducing the amount forwarded by
38 any amounts due or claimed in connection with any other
39 transaction, to (A) the provider of the transportation or
40 travel services; (B) the Airlines Reporting Corporation;

(C) the trust account identified in the registration of the seller of travel to whom the funds are forwarded; or (D) a registered seller of travel whose registration states that the registered seller is exempt pursuant to subdivision (b) or (c) from the requirements of Section 17550.15; and the seller of travel who forwards funds pursuant to subparagraph (C) or (D) obtains and keeps a copy of the registration referred to in subparagraph (C) or (D).

(3) The seller of travel is an officially appointed agent in good standing of the Airlines Reporting Corporation; and the air transportation, if any, is sold to the passenger pursuant to that agency appointment.

(4) The seller of travel has been in business under the same ownership for a period of three years, unless acquired or formed by a registered seller of travel that has been in business under the same ownership for a period of three years. For the purposes of this paragraph, the following shall not constitute a change in ownership:

(A) Any structural change involving a change in the type of entity, such as from a corporation to a partnership, and not involving the addition of any new, underlying ownership interest.

(B) The deletion of any owner or ownership interest.

(5) The seller of travel sells, provides, furnishes, contracts for, or arranges air or sea transportation or travel services only at retail directly to the general public and not through any other seller of travel, all of which air or sea transportation and travel services are to be furnished by other, unrelated providers or sellers of travel.

(6) The seller of travel is in compliance with the requirements of Section 17550.20 and Article 2.7 (commencing with Section 17550.35). Any seller of travel seeking to qualify for this exemption shall provide all information necessary for the Attorney General or his or her delegate to determine that the seller of travel meets the criteria set forth in paragraphs (1) to (6), inclusive.

(7) A seller of travel in a transaction where the air or sea transportation or travel services are furnished by a business entity that (A) is located and providing

1 transportation or travel services outside of the United
2 States and (B) is not in compliance with the provisions of
3 this article; is exempt from the requirements of Section
4 17550.15 for that transaction if the seller of travel obtains
5 each passenger's written acknowledgment of receiving,
6 prior to making any payment, a clear, conspicuous, and
7 complete written disclosure that the provider of
8 transportation or travel services is not in compliance with
9 the Seller of Travel Law and the transaction is not
10 covered by the Travel Consumer Restitution Fund, and
11 of the attendant risks and consequences thereof.

12 (8) If the Attorney General or his or her delegate finds,
13 pursuant to Section 17550.52, that *the* Travel Consumer
14 Restitution Corporation has failed or ceased to operate, a
15 seller of travel who was a participant in the Travel
16 Consumer Restitution Fund shall no longer be exempt
17 from compliance with the requirements of Section
18 17550.15 and 17550.17.

19 If Article 2.7 (commencing with Section 17550.35)
20 ceases to operate for any reason, including, but not
21 limited to, repeal pursuant to Section 17550.59, no seller
22 of travel shall be exempt from compliance with the
23 requirements of Sections 17550.15 and 17550.17 unless in
24 compliance with subdivision (b) or (c).

25 (b) A seller of travel who is a participant, with respect
26 to all sales of air or sea transportation and travel services,
27 in a Consumer Protection Deposit Plan that meets the
28 criteria of paragraphs (1) to (3), inclusive, and who
29 complies with paragraph (4) need not comply with
30 Section 17550.15.

31 (1) The plan is operated and administered by an entity
32 who demonstrates to the satisfaction of the Attorney
33 General or his or her delegate that the operating and
34 administering entity is competent and reliable; and that
35 the plan will achieve fully the purposes and objectives of
36 this article. Each approved plan shall include provisions
37 requiring that each participating seller of travel (A) has
38 been engaged in business as a seller of travel in the United
39 States under the same ownership for not less than three
40 years, unless acquired or formed by a seller of travel

1 already participating and in good standing in the plan,
2 and (B) has deposited with the administrator of the plan
3 a minimum of one million dollars (\$1,000,000) in security
4 in the form of a bond, letter of credit, or certificate of
5 deposit, which security shall be (i) in favor solely of the
6 plan; (ii) held by the plan pursuant to the terms of the
7 plan; (iii) used solely to refund passenger payments or
8 deposits or to complete tours; and (iv) payable solely in
9 the event that (I) the seller of travel fails to refund
10 passenger payments or deposits due as a result of the
11 bankruptcy, insolvency, or cessation of operations of the
12 seller of travel or after the cancellation or material failure
13 by the seller of travel to complete performance of the
14 passenger's transportation or travel services; or (II) the
15 seller of travel fails to replace the security with another
16 meeting the criteria set forth in subparagraph (B) no
17 later than 30 days prior to its expiration.

18 (2) Claims filed against the Consumer Protection
19 Deposit Plan are decided within 45 days of receipt and
20 paid within 30 days of decision.

21 (3) The Consumer Protection Deposit Plan has been
22 reviewed and approved in writing by the Attorney
23 General or his or her delegate as meeting the criteria set
24 forth above, including a finding that the plan will
25 effectuate the purposes of this article. Should the
26 approved plan cease to provide the consumer protections
27 set forth in paragraph (1), the Attorney General or his or
28 her delegate shall revoke his or her approval ~~forthwith~~
29 *immediately*. Upon that revocation, the seller of travel
30 shall no longer be exempt from compliance with the
31 requirements of Sections 17550.15 and 17550.17.

32 (4) Any participant in a Consumer Protection Deposit
33 Plan seeking to qualify for this exemption shall provide all
34 information necessary for the Attorney General or his or
35 her delegate to determine (A) that the Consumer
36 Protection Deposit Plan in which the seller of travel is a
37 participant meets the criteria set forth in paragraphs (1),
38 (2), and (3), (B) that the seller of travel is a participant
39 in full compliance with the terms and conditions of an
40 approved consumer protection deposit plan, and (C)



1 provide a written agreement from the authorized
2 representative of the Consumer Protection Deposit Plan
3 in which the plan administrator agrees to give the office
4 of the Attorney General, Consumer Law Section,
5 immediate written and telephonic notice in the event of
6 termination of the seller of travel's participation in the
7 plan.

8 (c) A seller of travel who utilizes for all transactions a
9 Consumer Protection Escrow Plan which meets the
10 criteria of paragraphs (1) to (6), inclusive, and who
11 complies with paragraph (7) is exempt from the
12 requirements of Section 17550.15.

13 (1) The plan is operated and administered as escrow
14 holder by a federally insured bank that demonstrates to
15 the Attorney General or his or her delegate that the
16 manner in which it will administer the plan will be
17 consistent with the purposes of this article. Each
18 approved escrow plan shall include provisions requiring
19 that all air tickets sold by participants in the plan be issued
20 through the Airlines Reporting Corporation.

21 (2) All funds delivered to the escrow holder, by cash,
22 check, charge card, or otherwise, are held and disbursed
23 by the escrow holder for the benefit of, and to protect the
24 interests of, the passenger.

25 (3) All funds are separately accounted for by booking
26 number and passenger name.

27 (4) Claims filed against the escrow plan are decided
28 within 45 days of receipt and paid within 30 days of
29 decision.

30 (5) All passenger funds are to be delivered to the
31 escrow holder as required by Section 17550.15.

32 (6) The Consumer Protection Escrow Plan has been
33 reviewed and approved in writing by the Attorney
34 General or his or her delegate as meeting the criteria set
35 forth herein, including a finding that the plan will
36 effectuate the purposes and objectives of this article.
37 Should the approved plan cease to provide the consumer
38 protections set forth in paragraphs (1) to (5), inclusive,
39 the Attorney General or his or her delegate shall revoke
40 his or her approval of the plan ~~forthwith~~ *immediately*.

1 Upon that revocation, the seller of travel shall no longer
2 be exempt from compliance with the requirements of
3 Sections 17550.15 and 17550.17.

4 (7) Any participant in a consumer protection plan
5 seeking to qualify for this exemption shall provide all
6 information necessary for the Attorney General or his or
7 her delegate to ~~determine~~ (A) *determine* that the
8 Consumer Protection Escrow Plan in which the seller of
9 travel is a participant meets the criteria set forth in
10 paragraphs (1) to (6), inclusive, (B) *determine* that the
11 seller of travel is a participant in full compliance with the
12 terms and conditions of an approved consumer
13 protection escrow plan, and (C) provide a written
14 agreement from the authorized representative of the
15 Consumer Protection Escrow Plan in which the plan
16 administrator agrees to give the office of the Attorney
17 General, Consumer Law Section, immediate written and
18 telephonic notice in the event of termination of the seller
19 of travel's participation in the plan.

20 SEC. 14. Section 17550.23 of the Business and
21 Professions Code is amended to read:

22 17550.23. (a) The Travel Consumer Restitution
23 Corporation shall notify the office of the Attorney
24 General whenever a seller of travel with its principal
25 place of business in California, ~~who~~ *which* does business
26 with persons located in California, is in compliance with
27 Article 2.7 (commencing with Section 17550.35).

28 (b) A registration application for a seller of travel who
29 does not or intends not to comply with the requirements
30 of Section 17550.15 because ~~such~~ *the* seller of travel claims
31 to meet the requirements of subdivision (b) of Section
32 17550.16 shall be accompanied by evidence that the seller
33 of travel is a participant in a Consumer Protection
34 Deposit Plan that meets the criteria set forth in
35 subdivision (b) of Section 17550.16.

36 (c) A registration application for a seller of travel who
37 does not or intends not to comply with the requirements
38 of Section 17550.15 because ~~such~~ *the* seller of travel claims
39 to meet the requirements of subdivision (c) of Section
40 17550.16 shall be accompanied by evidence that the seller

1 of travel is a participant in a Consumer Protection Escrow
2 Plan that meets the criteria set forth in subdivision (c) of
3 Section 17550.16.

4 SEC. 15. Section 17550.41 of the Business and
5 Professions Code is amended to read:

6 17550.41. (a) The Board of Directors of the Travel
7 Consumer Restitution Corporation shall be composed of
8 six directors, as follows:

9 (1) One public consumer representative member
10 appointed by the Director of ~~the Department of~~
11 Consumer Affairs.

12 (2) One employee of the Department of Justice,
13 assigned by the office of the Attorney General, who shall
14 serve as an ex officio, nonvoting member.

15 (3) Four directors who are participants in the Travel
16 Consumer Restitution Fund.

17 (b) The director appointed pursuant to paragraph (1)
18 of subdivision (a) shall serve until the appointment is
19 revoked or another appointment is made, or until the
20 director resigns.

21 (c) (1) Participant directors shall be elected by a
22 balloting of all participants in the Travel Consumer
23 Restitution Fund in an election to be conducted by the
24 Travel Consumer Restitution Corporation in February of
25 each year. Participant directors shall be elected to serve
26 two-year terms, with two of the four participant directors
27 being elected each year to staggered two-year terms.

28 ~~(3)~~

29 (2) The Travel Consumer Restitution Corporation
30 shall adopt bylaw provisions setting forth procedures for
31 the nomination, qualifications, and election of the four
32 participant directors, consistent with this section.

33 ~~(4)~~

34 (3) A director who does not qualify to be a participant
35 or who otherwise becomes unable to serve shall not
36 continue to serve as director. The board of the Travel
37 Consumer Restitution Corporation shall adopt rules
38 setting forth the procedures to determine that a director
39 is no longer able to serve as a director; and for the board

1 to elect a successor to serve as director until the next
2 election.

3 SEC. 16. Section 19950.2 of the Business and
4 Professions Code is amended to read:

5 19950.2. (a) On and after the effective date of this
6 chapter, neither the governing body nor the electors of
7 a county, city, or city and county that has not authorized
8 legal gaming within its boundaries prior to January 1,
9 1996, shall authorize legal gaming.

10 (b) No ordinance in effect on January 1, 1996, that
11 authorizes legal gaming within a city, county, or city and
12 county may be amended to expand gaming in that
13 jurisdiction beyond that permitted on January 1, 1996.

14 (c) Except as provided in subdivision (d), this section
15 shall remain operative only until January 1, 2001.

16 (d) With respect to Alameda, Contra Costa, Los
17 Angeles, San Mateo, and Santa Clara Counties only, due
18 to the over-concentration of gambling establishments in
19 those counties, this section shall remain operative with
20 respect to those counties until January 1, 2003, and as of
21 that date is repealed.

22 SEC. 17. Section 21701.1 of the Business and
23 Professions Code is amended to read:

24 21701.1. (a) The owner or operator of a self-service
25 storage facility; or a household goods carrier, may, for a
26 fee, transport individual storage containers to and from
27 a self-service storage facility that he or she owns or
28 operates. This transportation activity, whether
29 performed by an owner, operator, or carrier, shall not be
30 deemed transportation for compensation or hire as a
31 business of used household goods and is not subject to
32 regulation under Chapter 7 (commencing with Section
33 5101) of Division 2 of the Public Utilities Code, provided
34 that all of the following requirements are met:

35 (1) The fee charged (A) to deliver an empty
36 individual storage container to a customer and to
37 transport the loaded container to a self-service storage
38 facility; or (B) to return a loaded individual storage
39 container from a self-service storage facility to the
40 customer does not exceed one hundred dollars (\$100).



(2) The owner, operator, or carrier, or any affiliate of the owner, operator, or carrier, does not load, pack, or otherwise handle the contents of the container.

(3) The owner, operator, or carrier is registered under Chapter 2 (commencing with Section 34620) of Division 14.85 of the Vehicle Code or holds a permit under Chapter 7 (commencing with Section 5101) of Division 2 of the Public Utilities Code.

(4) The owner, operator, or carrier has procured and maintained cargo insurance in the amount of at least twenty thousand dollars (\$20,000) per shipment. Proof of cargo insurance coverage shall be maintained on file and presented to the Department of Motor Vehicles or Public Utilities Commission upon written request.

(5) The owner, operator, or carrier shall disclose to the customer in advance the following information regarding the container transfer service offered, in a written document separate from others furnished at the time of disclosure:

(A) A detailed description of the transfer service, including a commitment to use its best efforts to place the container in an appropriate location designated by the customer.

(B) The dimensions and construction of the individual storage containers used.

(C) The unit charge, if any, for the container transfer service; *that is* in addition to the storage charge or any other fees under the rental agreement.

(D) The availability of delivery or pickup by the customer of his or her goods at the self-service storage facility.

(E) The maximum allowable distance, measured from the self-service storage facility, for the initial pickup and final delivery of the loaded container.

(F) The precise terms of the company's right to move a container from the initial storage location at its own discretion; and a statement that the customer will not be required to pay additional charges with respect to that transfer.

1 (G) Conspicuous disclosure in bold text of the
2 allocation of responsibility for the risk of loss or damage
3 to the customer's goods, including any disclaimer of the
4 company's liability, and the procedure for presenting any
5 claim regarding loss or damage to the company.

6 The disclosure of terms and conditions required by this
7 subdivision, and the rental agreement, shall be received
8 by the customer a minimum of 72 hours prior to delivery
9 of the empty individual storage container; however, the
10 customer may, in writing, knowingly and voluntarily
11 waive that receipt. The company shall record in writing,
12 and retain for a period of at least six months after the end
13 of the rental, the time and method of delivery of the
14 information, any waiver made by the customer, and the
15 times and dates of initial pickup and redelivery of the
16 containerized goods.

17 (6) No later than the time the empty individual
18 storage container is delivered to the customer, the
19 company shall provide the customer with an
20 informational brochure containing the following
21 information about loading the container:

22 (A) Packing and loading tips to minimize damage in
23 transit.

24 (B) A suggestion that the customer make an inventory
25 of the items as they are loaded; and keep any other record
26 (for example, photographs, *or* videotape) that may assist
27 in any subsequent claims processing.

28 (C) A list of items that are impermissible to pack in the
29 container (for example, flammable items).

30 (D) A list of items that are not recommended to be
31 packed in light of foreseeable hazards inherent in the
32 company's handling of the containers; and in light of any
33 limitation of liability contained in the rental agreement.

34 (b) Pickup and delivery of the individual storage
35 containers shall be on a date agreed upon between the
36 customer and the company. If the company requires the
37 customer to be physically present at the time of pickup,
38 the company shall in fact be at the customer's premises
39 prepared to perform the service not more than four hours
40 later than the scheduled time agreed to by the customer

1 and company, and in the event of a preventable breach
2 of that obligation by the company, the customer shall be
3 entitled to receive a penalty of fifty dollars (\$50) from the
4 company and to elect rescission of the rental agreement
5 without liability.

6 (c) No charge shall be assessed with respect to any
7 movement of the container between self-service storage
8 facilities by the company at its own discretion, nor for the
9 delivery of a container to a customer's premises if the
10 customer advises the company, at least 24 hours before
11 the agreed time of container drop off, orally or in writing,
12 that he or she is rescinding the request for service.

13 (d) For purposes of this chapter, "individual storage
14 container" means a container that meets all of the
15 following requirements:

16 (1) It shall be fully enclosed and locked.

17 (2) It contains not less than 100 and not more than
18 1,100 cubic feet.

19 (3) It is constructed out of a durable material
20 appropriate for repeated use. A box constructed out of
21 cardboard or a similar material shall not constitute an
22 individual storage container for purposes of this section.

23 (e) Nothing in this section shall be construed to limit
24 the authority of the Public Utilities Commission to
25 investigate and commence an appropriate enforcement
26 action pursuant to Chapter 7 (commencing with Section
27 5101) of Division 2 of the Public Utilities Code against any
28 person transporting household goods in individual
29 storage containers in a manner other than that described
30 in this section.

31 SEC. 18. Section 23104.2 of the Business and
32 Professions Code is amended to read:

33 23104.2. (a) Subject to the exceptions specified in
34 subdivision (b), a retail licensee may return beer to the
35 wholesaler or manufacturer from whom the retail
36 licensee purchased the beer, or any successor thereto,
37 and the wholesaler, manufacturer, or successor thereto
38 may accept that return if the beer is returned in exchange
39 for the identical quantity and brand of beer. No
40 wholesaler or manufacturer, or any successor thereto,

1 shall accept the return of any beer from a retail licensee
2 except when the beer delivered was not the brand or size
3 container ordered by the retail licensee; or the amount
4 delivered was other than the amount ordered, in which
5 case the order may be corrected by the wholesaler or
6 manufacturer who sold the beer, or any successor thereto.
7 If a package had been broken or otherwise damaged prior
8 to or at the time of actual delivery, a credit memorandum
9 may be issued for the returned package by the wholesaler
10 or manufacturer who sold the beer, or any successor
11 thereto, in lieu of exchange for an identical package when
12 the return and corrections are completed within 15 days
13 from the date the beer was delivered to the retail
14 licensee.

15 (b) Notwithstanding subdivision (a), a wholesaler or
16 manufacturer, or any successor thereto, may accept the
17 return of beer purchased from that wholesaler,
18 manufacturer, or successor thereto, as follows:

19 (1) (A) From a seasonal or temporary licensee if at
20 the termination of the period of the license the seasonal
21 or temporary licensee has beer remaining unsold, or from
22 an annual licensee operating on a temporary basis if at the
23 termination of the temporary period the annual licensee
24 has beer remaining unsold.

25 (B) For purposes of ~~this~~ subparagraph (A), an annual
26 licensee shall be considered to be operating on a
27 temporary basis if he or she operates at seasonal resorts,
28 including summer and winter resorts, or at sporting or
29 entertainment facilities, including racetracks, arenas,
30 concert halls, and convention centers. Temporary status
31 shall be deemed terminated when operations cease for 15
32 days or more. No wholesaler or manufacturer, or
33 successor thereto, shall accept the return of beer from an
34 annual licensee considered to be operating on a
35 temporary basis; unless the licensee notifies that
36 wholesaler or manufacturer, or successor thereto, within
37 15 days of the date the licensee's operations ceased.

38 (2) (A) Subject to subparagraph (B), a wholesaler or
39 manufacturer, or any successor thereto, may, with
40 department approval, accept the return of a brand of

beer discontinued in a California market area or a seasonal brand of beer from a retail licensee, provided that the beer is exchanged for a quantity of beer of a brand produced or sold by the same manufacturer with a value no greater than the original sales price to the retail licensee of the returned beer. For purposes of this subparagraph, “seasonal brand of beer” means a brand of beer, as defined in Section 23006, that is brewed by a manufacturer to commemorate a specific holiday season and is so identified by appropriate product packaging and labeling.

(B) A discontinued brand of beer may not be reintroduced for a period of 12 months in the same California market area in which a return and exchange of that beer as described in subparagraph (A) has taken place. A seasonal brand of beer may not be reintroduced for a period of six months in the same California market area in which a return and exchange of that beer as described in subparagraph (A) has taken place.

SEC. 19. Section 1102.6c of the Civil Code is amended to read:

1102.6c. (a) This section shall apply only to any real property that is subject to one or more of the following:

- (1) Section 8589.3 of the Government Code.
- (2) Section 8589.4 of the Government Code.
- (3) Section 51183.5 of the Government Code.
- (4) Section 2621.9 of the Public Resources Code.
- (5) Section 2694 of the Public Resources Code.
- (6) Section 4136 of the Public Resources Code.

(b) In addition to the disclosure required pursuant to Section 1102.6, the transferor of any real property that is subject to this section, or his or her agent, shall deliver to the prospective transferee the following natural hazard disclosure statement:

NATURAL HAZARD DISCLOSURE STATEMENT

This statement applies to the following property: _____

1 The seller and his or her agent(s) disclose the following information
2 with the knowledge that even though this is not a warranty, pro-
3 spective buyers may rely on this information in deciding whether
4 and on what terms to purchase the subject property. Seller hereby
5 authorizes any agent(s) representing any principal(s) in this action
6 to provide a copy of this statement to any person or entity in con-
7 nection with any actual or anticipated sale of the property.

8
9 The following are representations made by the seller and his or her
10 agent(s) based on their knowledge and maps drawn by the state.
11 This information is a disclosure and is not intended to be part of any
12 contract between the buyer and the seller.

13
14 THIS REAL PROPERTY LIES WITHIN THE FOLLOWING
15 HAZARDOUS AREA(S):

16
17 A SPECIAL FLOOD HAZARD AREA ~~(Any~~ (any type Zone
18 “A” or “V”) designated by the Federal Emergency
19 Management Agency.

20
21 Yes ____ No ____ Do not know and
22 information not
23 available from local
24 jurisdiction ____

25
26 AN AREA OF POTENTIAL FLOODING shown on a dam
27 failure inundation map pursuant to Section 8589.5 of the
28 Government Code.

29
30 Yes ____ No ____ Do not know and
31 information not
32 available from local
33 jurisdiction ____

34
35 A VERY HIGH FIRE HAZARD SEVERITY ZONE pursuant
36 to Section 51178 or 51179 of the Government Code. The
37 owner of this property is subject to the maintenance
38 requirements of Section 51182 of the Government Code.



Yes ____ No ____

A WILDLAND AREA THAT MAY CONTAIN
SUBSTANTIAL FOREST FIRE RISKS AND HAZARDS
pursuant to Section 4125 of the Public Resources Code. The
owner of this property is subject to the maintenance
requirements of Section 4291 of the Public Resources Code.
Additionally, it is not the state's responsibility to provide fire
protection services to any building or structure located
within the wildlands unless the Department of Forestry and
Fire Protection has entered into a cooperative agreement
with a local agency for those purposes pursuant to Section
4142 of the Public Resources Code.

Yes ____ No ____

AN EARTHQUAKE FAULT ZONE pursuant to Section
2622 of the Public Resources Code.

Yes ____ No ____

A SEISMIC HAZARD ZONE pursuant to Section 2696 of the
Public Resources Code.

Yes (Landslide Zone)_____	Yes (Liquefaction Zone) _____
No ____	Map not yet released by state ____

THESE HAZARDS MAY LIMIT YOUR ABILITY TO DEVELOP
THE REAL PROPERTY, TO OBTAIN INSURANCE, OR TO
RECEIVE ASSISTANCE AFTER A DISASTER.

1 THE MAPS ON WHICH THESE DISCLOSURES ARE BASED
2 ESTIMATE WHERE NATURAL HAZARDS EXIST. THEY ARE
3 NOT DEFINITIVE INDICATORS OF WHETHER OR NOT A
4 PROPERTY WILL BE AFFECTED BY A NATURAL DISASTER.
5 BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN
6 PROFESSIONAL ADVICE REGARDING THOSE HAZARDS
7 AND OTHER HAZARDS THAT MAY AFFECT THE
8 PROPERTY.

9
10 Seller represents that the information herein is true and correct to
11 the best of the seller's knowledge as of the date signed by the seller.

12
13 Signature of Seller _____ Date _____

14
15 Agent represents that the information herein is true and correct to
16 the best of the agent's knowledge as of the date signed by the agent.

17
18 Signature of Agent _____ Date _____

19
20 Signature of Agent _____ Date _____

21
22 Buyer represents that he or she has read and understands this
23 document.

24
25 Signature of Buyer _____ Date _____

26
27 (c) If an earthquake fault zone, seismic hazard zone,
28 very high fire hazard severity zone, or wildland fire area
29 map or accompanying information is not of sufficient
30 accuracy or scale that a reasonable person can determine
31 if the subject real property is included in a natural hazard
32 area, the seller or seller's agent shall mark "Yes" on the
33 Natural Hazard Disclosure Statement. The seller or
34 seller's agent may mark "No" on the Natural Hazard
35 Disclosure Statement if he or she attaches a report
36 prepared pursuant to subdivision (c) of Section 1102.4
37 that verifies the property is not in the hazard zone.
38 Nothing in this subdivision is intended to limit or abridge
39 any existing duty of the seller or the seller's agents to



1 exercise reasonable care in making a determination
2 under this subdivision.

3 (d) The disclosure required pursuant to this section
4 may be provided by the seller and seller's agent in the
5 Local Option Real Estate Disclosure Statement, provided
6 that the Local Option Real Estate Disclosure Statement
7 includes substantially the same information and
8 substantially the same warning that is required by this
9 section.

10 (e) The disclosure required pursuant to this section is
11 only a disclosure between the seller, the seller's ~~agents~~
12 *agent*, and the buyer, and shall not be used by any other
13 party, including, but not limited to, insurance companies,
14 lenders, or governmental agencies, for any purpose.

15 (f) The specification of items for disclosure in this
16 section does not limit or abridge any obligation for
17 disclosure created by any other provision of law or that
18 may exist in order to avoid fraud, misrepresentation, or
19 deceit in the transfer transaction.

20 (g) In any transaction in which a seller has accepted,
21 prior to June 1, 1998, an offer to purchase, the seller, or his
22 or her agent, shall be deemed to have complied with the
23 requirement of subdivision (b) if the seller or agent
24 delivers to the prospective transferee a statement that
25 includes substantially the same information and warning
26 as the Natural Hazard Disclosure Statement.

27 SEC. 20. Section 1739.7 of the Civil Code is amended
28 to read:

29 1739.7. (a) As used in this section:

30 (1) "Autographed" means bearing the actual
31 signature of a personality signed by that individual's own
32 hand.

33 (2) "Collectible" means an autographed sports item,
34 including, but not limited to, a photograph, book, ticket,
35 plaque, sports program, trading card, item of sports
36 equipment or clothing, or other sports memorabilia sold
37 or offered for sale in or from this state by a dealer to a
38 consumer for five dollars (\$5) or more.

39 (3) "Consumer" means any natural person who
40 purchases a collectible from a dealer for personal, family,

1 or household purposes. “Consumer” also includes a
2 prospective purchaser meeting these criteria.

3 (4) “Dealer” means a person who is in the business of
4 selling or offering for sale collectibles in or from this state,
5 exclusively or nonexclusively, or a person who by his or
6 her occupation holds himself or herself out as having
7 knowledge or skill peculiar to collectibles, or to whom
8 that knowledge or skill may be attributed by his or her
9 employment of an agent or other intermediary that by his
10 or her occupation holds himself or herself out as having
11 that knowledge or skill. “Dealer” includes an auctioneer
12 who sells collectibles at a public auction, and also includes
13 persons who are consignors or representatives or agents
14 of auctioneers. “Dealer” includes a person engaged in a
15 mail order, telephone order, or cable television business
16 for the sale of collectibles.

17 (5) “Description” means any of the following:

18 (A) Any representation in writing, including, but not
19 limited to, a representation in an advertisement,
20 brochure, catalog, flyer, invoice, sign, or other
21 commercial or promotional material.

22 (B) Any oral representation.

23 (C) Any representation included in a radio or
24 television broadcast to the public in or from this state.

25 (6) “Limited edition” means any collectible that
26 meets all of the following requirements:

27 (A) A company has produced a specific quantity of a
28 collectible and placed it on the open market.

29 (B) The producer of the collectible has posted a
30 notice, at its primary place of business, that it will provide
31 any consumer, upon request, with a copy of a notice that
32 states the exact number of a collectible produced in that
33 series of limited editions.

34 (C) The producer makes available, upon request of a
35 consumer, evidence that the electronic encoding, films,
36 molds, or plates used to create the collectible have been
37 destroyed after the specified number of collectibles have
38 been produced.



1 (D) The sequence number of the collectible, and the
2 number of the total quantity produced in the limited
3 edition ~~is~~ *are* printed on the collectible.

4 (7) “Mint condition” means any collectible sold on the
5 open market or through a private transaction that meets
6 all of the following requirements:

7 (A) The item has never been circulated, used, or worn.

8 (B) The item exhibits little or no ~~signs~~ *sign* of aging or
9 degradation caused by oxidation or exposure to sunlight
10 as a result of its display.

11 (C) The item is otherwise free from creases,
12 blemishes, or marks.

13 (8) “Promoter” means a person who arranges, holds,
14 organizes, or presents a trade show featuring collectibles,
15 autograph signings, or both.

16 (9) “Person” means any natural person, partnership,
17 corporation, limited liability company, company, trust,
18 association, or other entity, however organized.

19 (b) Whenever a dealer, in selling or offering to sell to
20 a consumer a collectible in or from this state, provides a
21 description of that collectible as being autographed, the
22 dealer shall furnish a certificate of authenticity to the
23 consumer at the time of sale. The certificate of
24 authenticity shall be in writing, shall be signed by the
25 dealer or his or her authorized agent, and shall specify the
26 date of sale. The certificate of authenticity shall be in at
27 least 10-point boldface type and shall contain the dealer’s
28 true legal name and street address. The dealer shall retain
29 a copy of the certificate of authenticity for not less than
30 seven years. Each certificate of authenticity shall do all of
31 the following:

32 (1) Describe the collectible and specify the name of
33 the sports personality who autographed it.

34 (2) Either specify the purchase price and date of sale
35 or be accompanied by a separate invoice setting forth that
36 information.

37 (3) Contain an express warranty, which shall be
38 conclusively presumed to be part of the bargain, of the
39 authenticity of the collectible. This warranty shall not be
40 negated or limited by reason of the lack of words such as

1 “warranty” or “guarantee” or because the dealer does not
2 have a specific intent or authorization to make the
3 warranty or because any statement relevant to the
4 collectible is or purports to be, or is capable of being,
5 merely the dealer’s opinion.

6 (4) Specify if *whether* the collectible is offered as one
7 of a limited edition and, if so, ~~shall~~ specify (A) how the
8 collectible and edition are numbered and (B) the size of
9 the edition and the size of any prior or anticipated future
10 edition, if known, ~~or if not~~. *If the size of the edition and*
11 *the size of any prior or anticipated future edition is not*
12 known, the certificate shall contain an explicit statement
13 to that effect.

14 (5) Indicate whether the dealer is surety bonded or is
15 otherwise insured to protect the consumer against errors
16 and omissions of the dealer and, if bonded or insured,
17 provide proof thereof.

18 (6) Indicate the last four digits of the dealer’s resale
19 certificate number from the State Board of Equalization.

20 (7) Indicate whether the item was autographed in the
21 presence of the dealer and specify the date and location
22 of, and the name of a witness to, the autograph signing.

23 (8) Indicate whether the item was obtained or
24 purchased from a third party. If so, indicate the name and
25 address of this third party.

26 (9) Include an identifying serial number ~~which~~ *that*
27 corresponds to an identifying number printed on the
28 collectible item, if any. The serial number shall also be
29 printed on the sales receipt. If the sales receipt is printed
30 electronically, the dealer may manually write the serial
31 number on the receipt.

32 (c) No dealer shall represent an item as a collectible if
33 it was not autographed by the sports personality in his or
34 her own hand.

35 (d) No dealer shall display or offer for sale a collectible
36 in this state; unless, at the location where the collectible
37 is offered for sale; and in close proximity to the collectible
38 merchandise, there is a conspicuous sign that reads as
39 follows:

40

1 “SALE OF AUTOGRAPHED SPORTS MEMORABILIA:
2 AS REQUIRED BY LAW, A DEALER WHO SELLS TO
3 A CONSUMER ANY SPORTS MEMORABILIA
4 DESCRIBED AS BEING AUTOGRAPHED MUST
5 PROVIDE A WRITTEN CERTIFICATE OF
6 AUTHENTICITY AT THE TIME OF SALE. THIS
7 DEALER MAY BE SURETY BONDED OR
8 OTHERWISE INSURED TO ENSURE THE
9 AUTHENTICITY OF ANY COLLECTIBLE SOLD BY
10 THIS DEALER.”

11
12 (e) Any dealer engaged in a mail-order or
13 telephone-order business for the sale of collectibles in or
14 from this state:

15 (1) Shall include the disclosure specified in ~~paragraph~~
16 *subdivision* (d), in type of conspicuous size, in any written
17 advertisement relating to a collectible.

18 (2) Shall include in each television advertisement
19 relating to a collectible the following written on-screen
20 message, which shall be prominently displayed, ~~shall be~~
21 easily readable, and ~~shall be~~ clearly visible for no less than
22 five seconds, and *which* shall be repeated for five seconds
23 once during each four-minute segment of the
24 advertisement following the initial four minutes:

25
26 “A written certificate of authenticity is provided with
27 each autographed collectible, as required by law. This
28 dealer may be surety bonded or otherwise insured to
29 ensure the authenticity of any collectible sold by this
30 dealer.”

31
32 (3) Shall include as part of the oral message of each
33 radio advertisement for a collectible the disclosure
34 specified in subdivision (d).

35 (f) No dealer shall display or offer for sale a collectible
36 in this state at any trade show or similar event primarily
37 featuring sales of collectibles or other sports memorabilia
38 ~~which~~ *that* offers onsite admission ticket sales; unless, at
39 each onsite location where admission tickets are sold,

1 there is prominently displayed a specimen example of a
2 certificate of authenticity.

3 (g) Any consumer injured by the failure of a dealer to
4 provide a certificate of authenticity containing the
5 information required by this section, or by a dealer's
6 furnishing of a certificate of authenticity that is false, shall
7 be entitled to recover, in addition to actual damages, a
8 civil penalty in an amount equal to 10 times actual
9 damages, plus court costs, reasonable attorney's fees,
10 interest, and expert witness fees, if applicable, incurred
11 by the consumer in the action. The court, in its discretion,
12 may award additional damages based on the
13 egregiousness of the dealer's conduct. The remedy
14 specified in this section is in addition to, and not in lieu of,
15 any other remedy that may be provided by law.

16 (h) No person shall represent himself or herself as a
17 dealer in this state unless he or she possesses a valid resale
18 certificate number from the State Board of Equalization.

19 (i) A dealer may be surety bonded or otherwise
20 insured for purposes of indemnification against errors
21 and omissions arising from the authentication, sale, or
22 resale of collectibles.

23 (j) Whenever a promoter arranges or organizes a
24 trade show featuring collectibles and autograph signings,
25 the promoter shall notify, in writing, any dealer who has
26 agreed to purchase or rent space in this trade show what
27 the promoter will do if any laws of this state are violated,
28 including the fact that law enforcement officials will be
29 contacted when those laws are violated. This notice shall
30 be delivered to the dealer, at his or her registered place
31 of business, at the time the agreement to purchase space
32 in the trade show is made. The following language shall
33 be included in each notice:

34

35 "As a vendor at this collectibles trade show, you are a
36 professional representative of this hobby. As a result, you
37 will be required to follow the laws of this state, including
38 laws regarding the sale and display of collectibles, as
39 defined in Section 1739.7 of the Civil Code, forged and
40 counterfeit collectibles and autographs, and mint and



1 limited edition collectibles. If you do not obey the laws,
2 you may be evicted from this trade show, be reported to
3 law enforcement, and be held liable for a civil penalty of
4 10 times the amount of damages.”

5
6 SEC. 21. Section 1793.22 of the Civil Code is amended
7 to read:

8 1793.22. (a) This section shall be known and may be
9 cited as the Tanner Consumer Protection Act.

10 (b) It shall be presumed that a reasonable number of
11 attempts have been made to conform a new motor
12 vehicle to the applicable express warranties if, within one
13 year from delivery to the buyer or 12,000 miles on the
14 odometer of the vehicle, whichever occurs first, either
15 (1) the same nonconformity has been subject to repair
16 four or more times by the manufacturer or its agents and
17 the buyer has at least once directly notified the
18 manufacturer of the need for the repair of the
19 nonconformity or (2) the vehicle is out of service by
20 reason of repair of nonconformities by the manufacturer
21 or its agents for a cumulative total of more than 30
22 calendar days since delivery of the vehicle to the buyer.
23 The 30-day limit shall be extended only if repairs cannot
24 be performed due to conditions beyond the control of the
25 manufacturer or its agents. The buyer shall be required
26 to directly notify the manufacturer pursuant to
27 paragraph (1) only if the manufacturer has clearly and
28 conspicuously disclosed to the buyer, with the warranty
29 or the owner’s manual, the provisions of this section and
30 ~~that~~ of subdivision (d) of Section 1793.2, including the
31 requirement that the buyer must notify the
32 manufacturer directly pursuant to paragraph (1). This
33 presumption shall be a rebuttable presumption affecting
34 the burden of proof, and it may be asserted by the buyer
35 in any civil action, including an action in small claims
36 court, or other formal or informal proceeding.

37 (c) If a qualified third-party dispute resolution process
38 exists, and the buyer receives timely notification in
39 writing of the availability of that qualified third-party
40 dispute resolution process with a description of its

1 operation and effect, the presumption in subdivision (b)
2 may not be asserted by the buyer until after the buyer has
3 initially resorted to the qualified third-party dispute
4 resolution process as required in subdivision (d).
5 Notification of the availability of the qualified third-party
6 dispute resolution process is not timely if the buyer suffers
7 any prejudice resulting from any delay in giving the
8 notification. If a qualified third-party dispute resolution
9 process does not exist, or if the buyer is dissatisfied with
10 that third-party decision, or if the manufacturer or its
11 agent neglects to promptly fulfill the terms of the
12 qualified third-party dispute resolution process decision
13 after the decision is accepted by the buyer, the buyer may
14 assert the presumption provided in subdivision (b) in an
15 action to enforce the buyer's rights under subdivision (d)
16 of Section 1793.2. The findings and decision of a qualified
17 third-party dispute resolution process shall be admissible
18 in evidence in the action without further foundation. Any
19 period of limitation of actions under any federal or
20 California laws with respect to any person shall be
21 extended for a period equal to the number of days
22 between the date a complaint is filed with a third-party
23 dispute resolution process and the date of its decision or
24 the date before which the manufacturer or its agent is
25 required by the decision to fulfill its terms if the decision
26 is accepted by the buyer, whichever occurs later.

27 (d) A qualified third-party dispute resolution process
28 shall be one that does all of the following:

29 (1) Complies with the minimum requirements of the
30 Federal Trade Commission for informal dispute
31 settlement procedures as set forth in Part 703 of Title 16
32 of the Code of Federal Regulations, as those regulations
33 read on January 1, 1987.

34 (2) Renders decisions ~~which~~ *that* are binding on the
35 manufacturer if the buyer elects to accept the decision.

36 (3) Prescribes a reasonable time, not to exceed 30 days
37 after the decision is accepted by the buyer, within which
38 the manufacturer or its agent must fulfill the terms of its
39 decisions.



(4) Provides arbitrators who are assigned to decide disputes with copies of, and instruction in, the provisions of the Federal Trade Commission's regulations in Part 703 of Title 16 of the Code of Federal Regulations, as those regulations read on January 1, 1987, Division 2 (commencing with Section 2101) of the Commercial Code, and this chapter.

(5) Requires the manufacturer, when the process orders, under the terms of this chapter, either that the nonconforming motor vehicle be replaced if the buyer consents to this remedy or that restitution be made to the buyer, to replace the motor vehicle or make restitution in accordance with paragraph (2) of subdivision (d) of Section 1793.2.

(6) Provides, at the request of the arbitrator or a majority of the arbitration panel, for an inspection and written report on the condition of a nonconforming motor vehicle, at no cost to the buyer, by an automobile expert who is independent of the manufacturer.

(7) Takes into account, in rendering decisions, all legal and equitable factors, including, but not limited to, the written warranty, the rights and remedies conferred in regulations of the Federal Trade Commission contained in Part 703 of Title 16 of the Code of Federal Regulations as those regulations read on January 1, 1987, Division 2 (commencing with Section 2101) of the Commercial Code, this chapter, and any other equitable considerations appropriate ~~in~~ *under* the circumstances. Nothing in this chapter requires that, to be certified as a qualified third-party dispute resolution process pursuant to this section, decisions of the process must consider or provide remedies in the form of awards of punitive damages or multiple damages, under subdivision (c) of Section 1794, or of ~~attorneys'~~ *attorney's* fees under subdivision (d) of Section 1794, or of consequential damages other than as provided in subdivisions (a) and (b) of Section 1794, including, but not limited to, reasonable repair, towing, and rental car costs actually incurred by the buyer.

1 (8) Requires that no arbitrator deciding a dispute may
2 be a party to the dispute and that no other person,
3 including an employee, agent, or dealer for the
4 manufacturer, may be allowed to participate
5 substantively in the merits of any dispute with the
6 arbitrator unless the buyer is allowed to participate also.
7 Nothing in this subdivision prohibits any member of an
8 arbitration board from deciding a dispute.

9 (9) Obtains and maintains certification by the
10 Department of Consumer Affairs pursuant to Chapter 9
11 (commencing with Section 472) of Division 1 of the
12 Business and Professions Code.

13 (e) For the purposes of subdivision (d) of Section
14 1793.2 and this section, the following terms have the
15 following meanings:

16 (1) “Nonconformity” means a nonconformity ~~which~~
17 *that* substantially impairs the use, value, or safety of the
18 new motor vehicle to the buyer or lessee.

19 (2) “New motor vehicle” means a new motor vehicle
20 that is used or bought for use primarily for personal,
21 family, or household purposes. “New motor vehicle” also
22 means a new motor vehicle that is bought or used for
23 business and personal, family, or household purposes by
24 a person, including a partnership, limited liability
25 company, corporation, association, or any other legal
26 entity, to which not more than five motor vehicles are
27 registered in this state. “New motor vehicle” includes the
28 chassis, chassis cab, and that portion of a motor home
29 devoted to its propulsion, but does not include any
30 portion designed, used, or maintained primarily for
31 human habitation, a dealer-owned vehicle and a
32 “demonstrator” or other motor vehicle sold with a
33 manufacturer’s new car warranty, but does not include a
34 motorcycle or a motor vehicle ~~which~~ *that* is not registered
35 under the Vehicle Code because it is to be operated or
36 used exclusively off the highways. A ~~demonstrator~~
37 “*demonstrator*” is a vehicle assigned by a dealer for the
38 purpose of demonstrating qualities and characteristics
39 common to vehicles of the same or similar model and
40 type.

(3) “Motor home” means a vehicular unit, *designed for human habitation for recreational or emergency occupancy, that is* built on, or permanently attached to, a self-propelled motor vehicle chassis, chassis cab, or van, ~~which that~~ becomes an integral part of the completed vehicle, ~~designed for human habitation for recreational or emergency occupancy.~~

(f) (1) Except as provided in paragraph (2), no person shall sell, either at wholesale or retail, lease, or transfer a motor vehicle transferred by a buyer or lessee to a manufacturer pursuant to paragraph (2) of subdivision (d) of Section 1793.2 or a similar statute of any other state, unless the nature of the nonconformity experienced by the original buyer or lessee is clearly and conspicuously disclosed to the prospective buyer, lessee, or transferee, the nonconformity is corrected, and the manufacturer warrants to the new buyer, lessee, or transferee in writing for a period of one year that the motor vehicle is free of that nonconformity.

(2) Except for the requirement that the nature of the nonconformity be disclosed to the transferee, paragraph (1) does not apply to the transfer of a motor vehicle to an educational institution if the purpose of the transfer is to make the motor vehicle available for use in automotive repair courses.

SEC. 22. Section 1815 of the Civil Code is amended to read:

1815. An involuntary deposit is made:

(a) By the accidental leaving or placing of personal property in the possession of any person, without negligence on the part of its owner.

(b) In cases of fire, shipwreck, inundation, insurrection, riot, or like extraordinary emergencies, by the owner of personal property committing it, out of necessity, to the care of any person.

(c) By the delivery to, or ~~pick~~ *picking* up by, and the holding of, a stray live animal by any person; or public or private entity.

SEC. 23. Section 3269 of the Civil Code is amended to read:

1 3269. For purposes of this title, the following
2 definitions shall apply:

3 (a) “Year 2000 Problem” means any expected or
4 actual computing, physical, enterprise, or distribution
5 system complications that may occur in any computer
6 system, computer program, software application,
7 embedded systems, embedded chip calculations, or other
8 computing application as a result of the year change from
9 1999 to 2000. These complications are often associated
10 with the common programming practice of using a
11 two-digit field to represent a year, resulting in erroneous
12 date calculations, an ambiguous interpretation of the
13 term “00,” the failure to recognize the year 2000 as a leap
14 year, the use of algorithms that use the year “99” or “00”
15 as a flag for another function, or the use of applications,
16 software, or hardware that are date sensitive.

17 (b) “Information” means any assessment, projection,
18 estimate, planning document, objective, timetable, test
19 plan, test date, or test result related to the
20 implementation or verification of Year 2000 Problem
21 processing capabilities of a computer system, computer
22 program, software application, embedded systems,
23 embedded chip calculations, or other computing
24 application and intended to solve a ~~year~~ Year 2000
25 Problem.

26 (c) “Disclosure” and “discloses” ~~means~~ *mean* any
27 dissemination or provision of information without any
28 expectation or right to remuneration or fee therefor.

29 (d) “Person” means any individual, corporation,
30 partnership, business entity, joint venture, association,
31 the State of California or any of its subdivisions, or any
32 other organization, or any combination thereof.

33 SEC. 24. Section 631 of the Code of Civil Procedure is
34 amended to read:

35 631. (a) Trial by jury may be waived by the several
36 parties to an issue of fact in any of the following ways:

37 (1) By failing to appear at the trial.

38 (2) By written consent filed with the clerk or judge.

39 (3) By oral consent, in open court, entered in the
40 minutes or docket.

1 (4) By failing to announce that a jury is required, at the
2 time the cause is first set for trial, if it is set upon notice
3 or stipulation, or within five days after notice of setting if
4 it is set without notice or stipulation.

5 (5) By failing to deposit with the clerk, or judge,
6 advance jury fees 25 days prior to the date set for trial,
7 except in unlawful detainer actions where the fees shall
8 be deposited at least five days prior to the date set for trial,
9 or as provided by subdivision (b). The ~~advanced~~ *advance*
10 jury fee shall not exceed the amount necessary to pay the
11 average mileage and fees of 20 trial jurors for one day in
12 the court to which the jurors are summoned.

13 (6) By failing to deposit with the clerk or judge,
14 promptly after the impanelment of the jury, a sum equal
15 to the mileage or transportation (if ~~any~~ *be* allowed by
16 law) of the jury accrued up to that time.

17 (7) By failing to deposit with the clerk or judge, at the
18 beginning of the second and each succeeding day's
19 session a sum equal to one day's fees of the jury, and the
20 mileage or transportation, if any.

21 (b) In a superior court action, other than a limited civil
22 case, if a jury is demanded by either party in the
23 memorandum to set the cause for trial and the party,
24 prior to trial, by announcement or by operation of law,
25 waives a trial by jury, then all adverse parties shall have
26 five days following the receipt of notice of the waiver to
27 file and serve a demand for a trial by jury and to deposit
28 any advance jury fees that are then due.

29 (c) When the party who has demanded trial by jury
30 either (1) waives the trial upon or after the assignment
31 for trial to a specific department of the court, or upon or
32 after the commencement of the trial, or (2) fails to
33 deposit the fees as provided in paragraph (6) of
34 subdivision (a), trial by jury shall be waived by the other
35 party *by* either failing promptly to demand trial by jury
36 before the judge in whose department the waiver, other
37 than for the failure to deposit ~~such~~ *the* fees, was made, or
38 by ~~that party's~~ failing promptly to deposit the fees
39 ~~provided~~ *described* in paragraph (6) of subdivision (a).

(d) The court may, in its discretion upon just terms, allow a trial by jury although there may have been a waiver of a trial by jury.

SEC. 25. Section 1167.3 of the Code of Civil Procedure is amended to read:

1167.3. In any action under this chapter, unless otherwise ordered by the court for good cause shown, the time allowed the defendant to answer the complaint, answer the complaint, if amended, or amend the answer under ~~subdivision~~ *paragraph* (2), (3), (5), (6), or (7) of *subdivision (a)* of Section 586 shall not exceed five days.

SEC. 26. Section 25102 of the Corporations Code is amended to read:

25102. The following transactions are exempted from the provisions of Section 25110:

(a) Any offer (but not a sale) not involving any public offering and the execution and delivery of any agreement for the sale of securities pursuant to the offer if (1) the agreement contains substantially the following provision: “The sale of the securities that are the subject of this agreement has not been qualified with the Commissioner of Corporations of the State of California and the issuance of the securities or the payment or receipt of any part of the consideration therefor prior to the qualification is unlawful, unless the sale of securities is exempt from the qualification by Section 25100, 25102, or 25105 of the California Corporations Code. The rights of all parties to this agreement are expressly conditioned upon the qualification being obtained, unless the sale is so exempt”; and (2) no part of the purchase price is paid or received and none of the securities are issued until the sale of the securities is qualified under this law unless the sale of securities is exempt from the qualification by this section, Section 25100, or 25105.

(b) Any offer (but not a sale) of a security for which a registration statement has been filed under the Securities Act of 1933 but has not yet become effective, or for which an offering statement under Regulation A has been filed but has not yet been qualified, if no stop order or refusal order is in effect and no public

1 proceeding or examination looking toward such an order
2 is pending under Section 8 of the act and no order under
3 Section 25140 or subdivision (a) of Section 25143 is in
4 effect under this law.

5 (c) Any offer (but not a sale) and the execution and
6 delivery of any agreement for the sale of securities
7 pursuant to the offer as may be permitted by the
8 commissioner upon application. Any negotiating permit
9 under this subdivision shall be conditioned to the effect
10 that none of the securities may be issued and none of the
11 consideration therefor may be received or accepted until
12 the sale of the securities is qualified under this law.

13 (d) Any transaction or agreement between the issuer
14 and an underwriter or among underwriters if the sale of
15 the securities is qualified, or exempt from qualification, at
16 the time of distribution thereof in this state, if any.

17 (e) Any offer or sale of any evidence of indebtedness,
18 whether secured or unsecured, and any guarantee
19 thereof, in a transaction not involving any public offering.

20 (f) Any offer or sale of any security in a transaction
21 (other than an offer or sale to a pension or profit-sharing
22 trust of the issuer) that meets each of the following
23 criteria:

24 (1) Sales of the security are not made to more than 35
25 persons, including persons not in this state.

26 (2) All purchasers either have a preexisting personal
27 or business relationship with the offeror or any of its
28 partners, officers, directors or controlling persons, or
29 managers (as appointed or elected by the members) if
30 the offeror is a limited liability company, or by reason of
31 their business or financial experience or the business or
32 financial experience of their professional advisors who are
33 unaffiliated with and who are not compensated by the
34 issuer or any affiliate or selling agent of the issuer, directly
35 or indirectly, could be reasonably assumed to have the
36 capacity to protect their own interests in connection with
37 the transaction.

38 (3) Each purchaser represents that the purchaser is
39 purchasing for the purchaser's own account (or a trust
40 account if the purchaser is a trustee) and not with a view

1 to or for sale in connection with any distribution of the
2 security.

3 (4) The offer and sale of the security is not
4 accomplished by the publication of any advertisement.
5 The number of purchasers referred to above is exclusive
6 of any described in subdivision (i), any officer, director,
7 or affiliate of the issuer, or manager (as appointed or
8 elected by the members) if the issuer is a limited liability
9 company, and any other purchaser who the
10 commissioner designates by rule. For purposes of this
11 section, a husband and wife (together with any custodian
12 or trustee acting for the account of their minor children)
13 are counted as one person and a partnership, corporation,
14 or other organization that was not specifically formed for
15 the purpose of purchasing the security offered in reliance
16 upon this exemption, is counted as one person. The
17 commissioner may by rule require the issuer to file a
18 notice of transactions under this subdivision. However,
19 the failure to file the notice or the failure to file the notice
20 within the time specified by the rule of the commissioner
21 shall not affect the availability of this exemption. An issuer
22 who fails to file the notice as provided by rule of the
23 commissioner shall, within 15 business days after demand
24 by the commissioner, file the notice and pay to the
25 commissioner a fee equal to the fee payable had the
26 transaction been qualified under Section 25110.

27 (g) Any offer or sale of conditional sale agreements,
28 equipment trust certificates, or certificates of interest or
29 participation therein or partial assignments thereof,
30 covering the purchase of railroad rolling stock or
31 equipment or the purchase of motor vehicles, aircraft, or
32 parts thereof, in a transaction not involving any public
33 offering.

34 (h) Any offer or sale of voting common stock by a
35 corporation incorporated in any state if, immediately
36 after the proposed sale and issuance, there will be only
37 one class of stock of the corporation outstanding that is
38 owned beneficially by no more than 35 persons, provided
39 all of the following requirements have been met:

1 (1) The offer and sale of the stock is not accompanied
2 by the publication of any advertisement, and no selling
3 expenses have been given, paid, or incurred in
4 connection therewith.

5 (2) The consideration to be received by the issuer for
6 the stock to be issued ~~shall consist~~ *consists* of ~~(i) only any~~
7 *of the following*:

8 (A) *Only* assets (which may include cash) of an
9 existing business enterprise transferred to the issuer upon
10 its initial organization, of which all of the persons who are
11 to receive the stock to be issued pursuant to this
12 exemption were owners during, and the enterprise was
13 operated for, a period of not less than one year
14 immediately preceding the proposed issuance, and the
15 ownership of the enterprise immediately prior to the
16 proposed issuance was in the same proportions as the
17 shares of stock are to be issued, ~~or (ii) only~~.

18 (B) *Only* cash or cancellation of indebtedness for
19 money borrowed, or both, upon the initial organization
20 of the issuer, provided all of the stock is issued for the
21 same price per share, ~~or (iii) only~~.

22 (C) *Only* cash, provided the sale is approved in writing
23 by each of the existing shareholders and the purchaser or
24 purchasers are existing shareholders, ~~or (iv), in~~.

25 (D) *In* a case where after the proposed issuance there
26 will be only one owner of the stock of the issuer, *only* any
27 legal consideration.

28 (3) No promotional consideration has been given,
29 paid, or incurred in connection with the issuance.
30 Promotional consideration means any consideration paid
31 directly or indirectly to a person who, acting alone or in
32 conjunction with one or more other persons, takes the
33 initiative in founding and organizing the business or
34 enterprise of an issuer; for services rendered in
35 connection with the founding or organizing.

36 (4) A notice in a form prescribed by rule of the
37 commissioner, signed by an active member of the State
38 Bar of California, ~~shall be~~ *is* filed with or mailed for filing
39 to the commissioner not later than 10 business days after
40 receipt of consideration for the securities by the issuer;

1 ~~which.~~ *That* notice shall contain an opinion of the
2 member of the State Bar of California that the exemption
3 provided by this subdivision is available for the offer and
4 sale of the securities. However, the failure to file the
5 notice as required by this subdivision and the rules of the
6 commissioner shall not affect the availability of this
7 exemption. An issuer who fails to file the notice within the
8 time specified by this subdivision shall, within 15 business
9 days after demand by the commissioner, file the notice
10 and pay to the commissioner a fee equal to the fee payable
11 had the transaction been qualified under Section 25110.
12 The notice, except when filed on behalf of a California
13 corporation, shall be accompanied by an irrevocable
14 consent, in the form that the commissioner by rule
15 prescribes, appointing the commissioner or his or her
16 successor in office to be the issuer's attorney to receive
17 service of any lawful process in any noncriminal suit,
18 action, or proceeding against it or its successor that arises
19 under this law or any rule or order hereunder after the
20 consent has been filed, with the same force and validity
21 as if served personally on the issuer. An issuer on whose
22 behalf a consent has been filed in connection with a
23 previous qualification or exemption from qualification
24 under this law (or application for a permit under any
25 prior law if the application or notice under this law states
26 that the consent is still effective) need not file another.
27 Service may be made by leaving a copy of the process in
28 the office of the commissioner, but it is not effective
29 unless—(1) (A) the plaintiff, who may be the commissioner
30 in a suit, action, or proceeding instituted by him or her,
31 forthwith sends notice of the service and a copy of the
32 process by registered or certified mail to the defendant
33 or respondent at its last address on file with the
34 commissioner, and (2) (B) the plaintiff's affidavit of
35 compliance with this section is filed in the case on or
36 before the return day of the process, if any, or within the
37 further time as the court allows.
38 (5) Each purchaser represents that the purchaser is
39 purchasing for the purchaser's own account, or a trust
40 account if the purchaser is a trustee, and not with a view

1 to or for sale in connection with any distribution of the
2 stock.

3 For the purposes of this subdivision, all securities held
4 by a husband and wife, whether or not jointly, shall be
5 considered to be owned by one person, and all securities
6 held by a corporation that has issued stock pursuant to this
7 exemption shall be considered to be held by the
8 shareholders to whom it has issued the stock.

9 All stock issued by a corporation pursuant to this
10 subdivision as it existed prior to the effective date of the
11 amendments to this section made during the 1996 portion
12 of the 1995–96 Regular Session that required the issuer to
13 have stamped or printed prominently on the face of the
14 stock certificate a legend in a form prescribed by rule of
15 the commissioner restricting transfer of the stock in a
16 manner provided for by that rule shall not be subject to
17 the transfer restriction legend requirement and, by
18 operation of law, the corporation is authorized to remove
19 that transfer restriction legend from the certificates of
20 those shares of stock issued by the corporation pursuant
21 to this subdivision as it existed prior to the effective date
22 of the amendments to this section made during the 1996
23 portion of the 1995–96 Regular Session.

24 (i) Any offer or sale (1) to a bank, savings and loan
25 association, trust company, insurance company,
26 investment company registered under the Investment
27 Company Act of 1940, pension or profit-sharing trust
28 (other than a pension or profit-sharing trust of the issuer,
29 a self-employed individual retirement plan, or individual
30 retirement account), or other institutional investor or
31 governmental agency or instrumentality that the
32 commissioner may designate by rule, whether the
33 purchaser is acting for itself or as trustee, or (2) to any
34 corporation with outstanding securities registered under
35 Section 12 of the Securities Exchange Act of 1934 or any
36 wholly owned subsidiary of ~~such a~~ the corporation that
37 after the offer and sale will own directly or indirectly 100
38 percent of the outstanding capital stock of the issuer;
39 provided the purchaser represents that it is purchasing
40 for its own account (or for the trust account) for

1 investment and not with a view to or for sale in
2 connection with any distribution of the security.

3 (j) Any offer or sale of any certificate of interest or
4 participation in an oil or gas title or lease (including
5 subsurface gas storage and payments out of production)
6 if ~~(1) all~~ *either of the following apply:*

7 *(1) All of the purchasers meet one of the following*
8 *requirements: (i) are*

9 *(A) Are and have been during the preceding two*
10 *years engaged primarily in the business of drilling for,*
11 *producing, or refining oil or gas (or whose corporate*
12 *predecessor, in the case of a corporation, has been so*
13 *engaged), or (ii) are.*

14 *(B) Are persons described in clause (1) of subdivision*
15 *(i) of this section, or (iii) have.*

16 *(C) Have been found by the commissioner upon*
17 *written application to be substantially engaged in the*
18 *business of drilling for, producing, or refining oil or gas so*
19 *as not to require the protection provided by this law*
20 *(which finding shall be effective until rescinded), or (2)*
21 *the.*

22 *(2) The security is concurrently hypothecated to a*
23 *bank in the ordinary course of business to secure a loan*
24 *made by the bank, provided that each purchaser*
25 *represents that it is purchasing for its own account for*
26 *investment and not with a view to or for sale in*
27 *connection with any distribution of the security.*

28 (k) Any offer or sale of any security under, or pursuant
29 to, a plan of reorganization under Chapter 11 of the
30 federal bankruptcy law that has been confirmed or is
31 subject to confirmation by the decree or order of a court
32 of competent jurisdiction.

33 (l) Any offer or sale of an option, warrant, put, call, or
34 straddle, and any guarantee of any of these securities, by
35 a person who is not the issuer of the security subject to the
36 right, if the transaction, had it involved an offer or sale of
37 the security subject to the right by the person, would not
38 have violated Section 25110 or 25130.

39 (m) Any offer or sale of a stock to a pension,
40 profit-sharing, stock bonus, or employee stock ownership

1 plan, provided that (1) the plan meets the requirements
2 for qualification under Section 401 of the Internal
3 Revenue Code, and (2) the employees are not required
4 or permitted individually to make any contributions to
5 the plan. The exemption provided by this subdivision
6 shall not be affected by whether the stock is contributed
7 to the plan, purchased from the issuer with contributions
8 by the issuer or an affiliate of the issuer, or purchased from
9 the issuer with funds borrowed from the issuer, an
10 affiliate of the issuer, or any other lender.

11 (n) Any offer or sale of any security in a transaction,
12 other than an offer or sale of a security in a rollup
13 transaction, that meets all of the following criteria:

14 (1) The issuer is (A) a California corporation or
15 foreign corporation that, at the time of the filing of the
16 notice required under this subdivision, is subject to
17 Section 2115, or (B) any other form of business entity,
18 including without limitation a partnership or trust
19 organized under the laws of this state. The exemption
20 provided by this subdivision is not available to a “blind
21 pool” issuer, as that term is defined by the commissioner,
22 or to an investment company subject to the Investment
23 Company Act of 1940.

24 (2) Sales of securities are made only to qualified
25 purchasers or other persons the issuer reasonably
26 believes, after reasonable inquiry, to be qualified
27 purchasers. A corporation, partnership, or other
28 organization specifically formed for the purpose of
29 acquiring the securities offered by the issuer in reliance
30 upon this exemption may be a qualified purchaser if each
31 of the equity owners of the corporation, partnership, or
32 other organization is a qualified purchaser. Qualified
33 purchasers include the following:

34 (A) A person designated in Section 260.102.13 of Title
35 10 of the California Code of Regulations.

36 (B) A person designated in subdivision (i) or any rule
37 of the commissioner adopted thereunder.

38 (C) A pension or profit-sharing trust of the issuer, a
39 self-employed individual retirement plan, or an
40 individual retirement account, if the investment

1 decisions made on behalf of the trust, plan, or account are
2 made solely by persons who are qualified purchasers.

3 (D) An organization described in Section 501(c)(3) of
4 the Internal Revenue Code, corporation, Massachusetts
5 or similar business trust, or partnership, each with total
6 assets in excess of five million dollars (\$5,000,000)
7 according to its most recent audited financial statements.

8 (E) With respect to the offer and sale of one class of
9 voting common stock of an issuer or of preferred stock of
10 an issuer entitling the holder thereof to at least the same
11 voting rights as the issuer's one class of voting common
12 stock, provided that the issuer has only one-class voting
13 common stock outstanding upon consummation of the
14 offer and sale, a natural person who, either individually
15 or jointly with the person's spouse, (i) has a minimum net
16 worth of two hundred fifty thousand dollars (\$250,000)
17 and had, during the immediately preceding tax year,
18 gross income in excess of one hundred thousand dollars
19 (\$100,000) and reasonably expects gross income in excess
20 of one hundred thousand dollars (\$100,000) during the
21 current tax year or (ii) has a minimum net worth of five
22 hundred thousand dollars (\$500,000). "Net worth" shall
23 be determined exclusive of home, home furnishings, and
24 automobiles. Other assets included in the computation of
25 net worth may be valued at fair market value.

26 Each natural person specified above, by reason of his or
27 her business or financial experience, or the business or
28 financial experience of his or her professional advisor,
29 who is unaffiliated with and who is not compensated,
30 directly or indirectly, by the issuer or any affiliate or
31 selling agent of the issuer, can be reasonably assumed to
32 have the capacity to protect his or her interests in
33 connection with the transaction. The amount of the
34 investment of each natural person shall not exceed 10
35 percent of the net worth, as determined by this
36 subparagraph, of that natural person.

37 (F) Any other purchaser designated as qualified by
38 rule of the commissioner.

39 (3) Each purchaser represents that the purchaser is
40 purchasing for the purchaser's own account (or trust

1 account, if the purchaser is a trustee) and not with a view
2 to or for sale in connection with a distribution of the
3 security.

4 (4) Each natural person purchaser, including a
5 corporation, partnership, or other organization
6 specifically formed by natural persons for the purpose of
7 acquiring the securities offered by the issuer, receives, at
8 least five business days before securities are sold to, or a
9 commitment to purchase is accepted from, the
10 purchaser, a written offering disclosure statement that
11 shall meet the disclosure requirements of Regulation D
12 (17 C.F.R. 230.501 et seq.), and any other information as
13 may be prescribed by rule of the commissioner; provided
14 that the issuer shall not be obligated pursuant to this
15 paragraph to provide this disclosure statement to a
16 natural person qualified under Section 260.102.13 of Title
17 10 of the California Code of Regulations. The offer or sale
18 of securities pursuant to a disclosure statement required
19 by this paragraph *that is* in violation of Section 25401, or
20 that fails to meet the disclosure requirements of
21 Regulation D (17 C.F.R. 230.501 et seq.), shall not render
22 unavailable to the issuer the claim of an exemption from
23 Section 25110 afforded by this subdivision. This paragraph
24 does not impose, directly or indirectly, any additional
25 disclosure obligation with respect to any other exemption
26 from qualification available under any other provision of
27 this section.

28 (5) (A) A general announcement of proposed
29 offering may be published by written document only,
30 provided that the general announcement of proposed
31 offering sets forth the following required information:

- 32 (i) The name of the issuer of the securities.
- 33 (ii) The full title of the security to be issued.
- 34 (iii) The anticipated suitability standards for
35 prospective purchasers.
- 36 (iv) A statement that (I) no money or other
37 consideration is being solicited or will be accepted, (II)
38 an indication of interest made by a prospective purchaser
39 involves no obligation or commitment of any kind, and,
40 if the issuer is required by paragraph (4) to deliver a

1 disclosure statement to prospective purchasers, (III) no
2 sales will be made or commitment to purchase accepted
3 until five business days after delivery of a disclosure
4 statement and subscription information to the
5 prospective purchaser in accordance with the
6 requirements of this subdivision.

7 (v) Any other information required by rule of the
8 commissioner.

9 (vi) The following legend: “For more complete
10 information about (Name of Issuer) and (Full Title of
11 Security), send for additional information from (Name
12 and Address) by sending this coupon or calling
13 (Telephone Number).”

14 (B) The general announcement of proposed offering
15 referred to in subparagraph (A) may also set forth the
16 following information:

17 (i) A brief description of the business of the issuer.

18 (ii) The geographic location of the issuer and its
19 business.

20 (iii) The price of the security to be issued, or, if the
21 price is not known, the method of its determination or the
22 probable price range as specified by the issuer, and the
23 aggregate offering price.

24 (C) The general announcement of proposed offering
25 shall contain only the information that is set forth in this
26 paragraph.

27 (D) Dissemination of the general announcement of
28 proposed offering to persons who are not qualified
29 purchasers, without more, shall not disqualify the issuer
30 from claiming the exemption under this subdivision.

31 (6) No telephone solicitation shall be permitted until
32 the issuer has determined that the prospective purchaser
33 to be solicited is a qualified purchaser.

34 (7) The issuer files a notice of transaction under this
35 subdivision both (A) concurrent with the publication of
36 a general announcement of proposed offering or at the
37 time of the initial offer of the securities, whichever occurs
38 first, accompanied by a filing fee, and (B) within 10
39 business days following the close or abandonment of the
40 offering, but in no case more than 210 days from the date

1 of filing the first notice. The first notice of transaction
2 under subparagraph (A) shall contain an undertaking, in
3 a form acceptable to the commissioner, to deliver any
4 disclosure statement required by paragraph (4) to be
5 delivered to prospective purchasers, and any supplement
6 thereto, to the commissioner within 10 days of the
7 commissioner's request for the information. The
8 exemption from qualification afforded by this subdivision
9 is unavailable if an issuer fails to file the first notice
10 required under subparagraph (A) or to pay the filing fee.
11 The commissioner has the authority to assess an
12 administrative penalty of up to one thousand dollars
13 (\$1,000) against an issuer that fails to deliver the
14 disclosure statement required to be delivered to the
15 commissioner upon the commissioner's request within
16 the time period set forth above. Neither the filing of the
17 disclosure statement nor the failure by the commissioner
18 to comment thereon precludes the commissioner from
19 taking any action deemed necessary or appropriate
20 under this division with respect to the offer and sale of the
21 securities.

22 (o) An offer or sale of any security issued pursuant to
23 a stock purchase plan or agreement, or issued pursuant to
24 a stock option plan or agreement, where the security is
25 exempt from registration under the Securities Act of
26 1933, as amended, pursuant to Rule 701 adopted pursuant
27 to that act (17 C.F.R. 230.701), the provisions of which are
28 hereby incorporated by reference into this section;
29 provided that (1) the terms of any stock purchase plan or
30 agreement shall comply with Sections 260.140.42,
31 260.140.45, and 260.140.46 of Title 10 of the California
32 Code of Regulations, (2) the terms of any stock option
33 plan or agreement shall comply with Sections 260.140.41,
34 260.140.45, and 260.140.46 of Title 10 of the California
35 Code of Regulations, and (3) the issuer files a notice of
36 transaction in accordance with rules adopted by the
37 commissioner within 30 days after the initial issuance of
38 any security under that plan, accompanied by a filing fee
39 as prescribed by subdivision (y) of Section 25608.

1 (p) An offer or sale of nonredeemable securities to
2 accredited investors (Section 28031) by a person licensed
3 under the Capital Access Company Law (Division 3
4 (commencing with Section 28000) of Title 4). All
5 nonredeemable securities shall be evidenced by
6 certificates that shall have stamped or printed
7 prominently on their face a legend in a form to be
8 prescribed by rule or order of the commissioner
9 restricting transfer of the securities in the manner as the
10 rule or order provides.

11 SEC. 27. Section 28956 of the Corporations Code is
12 amended to read:

13 28956. If any provision of this division ~~are~~, or the
14 application thereof to any person or circumstance, is held
15 invalid, the invalidity shall not affect other provisions or
16 applications of this law ~~which~~ *that* can be given effect
17 without the invalid provision or application, and to this
18 end the provisions of this division are declared to be
19 severable.

20 SEC. 28. Section 8927 of the Education Code is
21 amended to read:

22 8927. (a) The Legislature finds and declares that an
23 evaluation of the Teenage Pregnancy Prevention Grant
24 Program is both desirable and necessary; and,
25 accordingly, requires all of the following:

26 (1) No later than October 1, 2001, each local
27 educational agency that receives a grant shall submit a
28 report to the superintendent that includes:

29 (A) An assessment of the effectiveness of that local
30 educational agency in achieving stated goals, including
31 reducing teenage birthrates, delaying sexual activity, and
32 increasing high school completion rates.

33 (B) Problems encountered in the design and
34 operation of the grant program plan, including
35 identification of any federal, state, or local statute or
36 regulation that impedes program implementation.

37 (C) Client and practitioner satisfaction.

38 (2) The superintendent shall contract for an
39 independent evaluation of the effectiveness of funds
40 awarded under this chapter in assisting local educational

agencies in implementing the Teenage Pregnancy Prevention Grant Program. No later than April 1, 2002, the superintendent shall submit to the Governor and the Legislature the results of the evaluation, and a summary of the reports submitted to the superintendent pursuant to ~~subdivision (a)~~ *paragraph (1)*.

~~(1)~~

(A) The evaluation shall focus on youth education, health, and social measures, as appropriate, including, but not limited to, birthrates, delayed sexual activity, school attendance, academic performance, dropout rates, pupil grades, birth weights, self-esteem, child protective services referrals, family functioning, and school staff and administration participation.

~~(2)~~

(B) Additional independent evaluations may be conducted by the superintendent subject to additional funding being made available for purposes of this chapter in subsequent fiscal years.

(b) This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

SEC. 29. Section 42238.95 of the Education Code is amended to read:

42238.95. (a) The amount per unit of average daily attendance for pupils in special classes and centers that shall be apportioned to each county office of education shall be equal to the amount determined for the district of residence pursuant to Section 42238.9, increased by the quotient equal to the amount determined pursuant to ~~subdivision (b)~~ *paragraph (1)* divided by the amount determined pursuant to ~~subdivision (c)~~ *paragraph (2)*. This subdivision ~~shall only apply~~ *applies* to average daily attendance served by employees of the county office of education.

~~(b)~~

(1) Determine the second principal apportionment average daily attendance for special education for the county office of education for the 1996–97 fiscal year,

1 including attendance for excused absences, divided by
2 the corresponding average daily attendance excluding
3 attendance for excused absences pursuant to subdivision
4 (b) of *Section* 46010 as it read on July 1, 1996, reported
5 pursuant to Section 41601 for the 1996–97 fiscal year.

6 ~~(e)~~

7 (2) Determine the second principal apportionment
8 average daily attendance for the 1996–97 fiscal year,
9 including attendance for excused absences, for all of the
10 school districts within the county, excluding average daily
11 attendance for county office special education and
12 county community school programs and nonpublic
13 nonsectarian schools, divided by the corresponding
14 average daily attendance, excluding attendance for
15 excused absences *determined* pursuant to subdivision (b)
16 of Section 46010 as it read on July 1, 1996, and reported
17 pursuant to Section 41601 for the 1996–97 fiscal year.

18 ~~(d)~~

19 (b) A county office of education shall provide the data
20 required to perform the calculation specified in
21 ~~subdivision (b)~~ *paragraph (1) of subdivision (a)* to the
22 Superintendent of Public Instruction in order to be
23 eligible for the adjustment pursuant to subdivision (a).

24 SEC. 30. Section 44259.3 of the Education Code is
25 amended to read:

26 44259.3. The commission shall review the minimum
27 requirements set forth in Section 44259 for the
28 preliminary and professional multiple subject teaching
29 credential and shall recommend their revision as
30 necessary, during the normal revision cycles, to ensure
31 that teachers of the elementary grades receive training
32 related to, and have knowledge of, developmentally
33 appropriate teaching methods for pupils in kindergarten
34 and grades 1 to 3, inclusive, who may be of the same grade
35 level but of vastly different developmental levels. As part
36 of its review, the commission shall ensure that the
37 requirements link academic theory regarding child
38 development to instructional methods designed for use in
39 classrooms of young pupils of varying ~~development~~
40 *developmental* levels. These instructional methods

1 should be designed to ensure success and progress by all
2 pupils and should especially help teachers ensure that
3 children who enter school less prepared or with fewer
4 skills than their classmates meet the expected
5 performance standards for that grade by the end of the
6 instructional year. At the conclusion of its review, the
7 commission shall report to the Legislature on its
8 recommended revisions, on or before January 1, 2001.

9 SEC. 31. Section 44403 of the Education Code is
10 amended to read:

11 44403. The commission shall, on or before January 1,
12 2004, submit to the education policy committees of the
13 Legislature, the ~~office of the~~ Legislative Analyst, and the
14 Department of Finance, a summative report of the
15 effects of this article. The report shall include
16 recommendations regarding the continuation,
17 modification, or termination of the program. Subject to
18 an appropriation of sufficient funds to the commission for
19 this purpose, the commission shall base its report on an
20 evaluation of the California Mathematics Initiative for
21 Teaching by an independent contractor selected in
22 consultation with the ~~Office~~ *office* of the Legislative
23 Analyst. If, in the judgment of the commission, available
24 funds are insufficient to contract for an independent
25 evaluation, the commission shall base its report on
26 information received from school districts and county
27 superintendents of schools pursuant to subdivision (e) of
28 Section 44402.

29 SEC. 32. Section 44579.4 of the Education Code is
30 amended to read:

31 44579.4. (a) For the 1998–99 school year, a school
32 district may request the State Board of Education to
33 provide a waiver of instructional time requirements if
34 both of the following conditions are met:

35 (1) The district provides evidence to the board that
36 the waiver is necessary only because the repeal of the
37 authority of school districts to provide staff development
38 during instructional time results in the district being
39 unable to reasonably meet the instructional time
40 requirements.

(2) The school district had a school calendar, or a schoolsite plan adopted in accordance with law, either of which was approved by the governing board prior to ~~the operative date of this section~~ August 19, 1998, or not more than 30 days after that date, that authorizes the use of instructional days for staff development.

(b) A school district that receives a waiver for the 1998–99 school year shall ensure that both of the following occur:

(1) The combined instructional time and staff development time provided by the district during the 1998–99 school year pursuant to the waiver meets or exceeds 180 days or the equivalent number of annual instructional minutes determined pursuant to Article 8 (commencing with Section 46200) of Chapter 2 of Part 26.

(2) The actual instructional time provided is at least 172 days or the equivalent number of annual instructional minutes determined pursuant to Article 8 (commencing with Section 46200) of Chapter 2 of Part 26.

(c) The maximum amount of instructional time that may be waived may not exceed the number of days ~~for which~~ the school district had previously approved ~~for~~ as staff development days within the school calendar, or in a schoolsite plan adopted in accordance with law.

(d) A school district that receives a waiver for the 1998–99 school year under this section shall only be eligible to receive staff development funding under this article for each day of staff development offered under this article that replaces a staff development day previously authorized under Sections 44670.6, 48645.7, 52022, 52854, or 56242 and utilized during the 1997–98 school year and that was included in a school calendar, or schoolsite plan adopted in accordance with law, that was approved by the ~~local~~ governing board prior to ~~the operative date of this section~~ August 19, 1998, or not more than 30 days after that date. For purposes of this subdivision, a staff development day funded pursuant to the Staff Development Buy-Out Program in the 1997–98 school year shall be funded in the 1998–99 school year with no requirement that this day replace an additional staff

1 development day that was previously authorized
2 pursuant to Sections 44670.6, 48645.7, 52022, 52854, or
3 56242.

4 SEC. 33. Section 44731 of the Education Code is
5 amended to read:

6 44731. A school district shall certify all of the
7 following, to the State Department of Education as a
8 condition of each applicant school *in the district* being
9 eligible to receive funding pursuant to this chapter:

10 (a) ~~All schools~~ *Each school* maintaining any of grades
11 4 to 8, inclusive, that ~~are~~ *is* applying for funding under this
12 chapter ~~have~~ *has* access, for instructional purposes, to the
13 Internet in ~~their~~ *its* classrooms and ~~have~~ *has* a sufficient
14 number of up-to-date computers or other devices that
15 provide Internet access in ~~their~~ *its* classrooms for
16 instructional use.

17 (b) The funds received pursuant to this chapter shall
18 be ~~spent~~ *expended* by the eligible schools for the purpose
19 of providing in-service training to their schoolsite
20 administrators, appropriate instructional classified
21 employees, and certificated employees who provide
22 direct instructional services to pupils in grades 4 to 8,
23 inclusive, in the use of education technology to support
24 the daily instruction of pupils and the recordkeeping
25 necessary to support that instruction.

26 (c) The funds received pursuant to this chapter shall
27 be expended for in-service training programs in
28 education technology that meet or exceed the
29 proficiency standards developed by the Commission on
30 Teacher Credentialing pursuant to Section 44259.

31 (d) ~~The~~ *Each* applicant ~~schools~~ *school* ~~has~~
32 developed *an* action ~~plans~~ *plan* that ~~provide~~ *provides* for
33 a program of in-service training in education technology
34 for ~~their~~ *its* schoolsite administrators, appropriate
35 instructional classified employees, and all certificated
36 employees who provide direct instructional services to
37 pupils in grades 4 to 8, inclusive. In the action-~~plans~~ *plan*,
38 the applicant ~~schools~~ *school* shall, to the extent feasible
39 and appropriate, integrate training in educational
40 technology with all of the following:

1 (1) Staff development days authorized pursuant to
2 Section 44670.6 or 52854.

3 (2) Staff development funds available from all state
4 and federal funding sources.

5 (3) Involvement of the parents and guardians of pupils
6 enrolled in the school district.

7 (e) In-service training provided pursuant to this
8 chapter shall be coordinated and integrated with any
9 other in-service training, including staff development
10 offered pursuant to Article 7.5 (commencing with
11 Section 44579) of Chapter 3.

12 SEC. 34. Section 51201.5 of the Education Code is
13 amended to read:

14 51201.5. (a) Commencing in the 1992–93 school year,
15 school districts shall ensure that all pupils in grades 7 to
16 12, inclusive, or the equivalent thereof, except as
17 otherwise provided in subdivision (c), receive AIDS
18 prevention instruction from adequately trained
19 instructors in appropriate courses. Each pupil shall
20 receive the instruction at least once in junior high or
21 middle school and once in high school. For purposes of
22 this subdivision, “school district” includes county boards
23 of education, county superintendents of schools, and the
24 State Schools for the Handicapped.

25 (b) The required AIDS prevention instruction shall
26 accurately reflect the latest information and
27 recommendations from the United States Surgeon
28 General, federal Centers for Disease Control, and the
29 National Academy of Sciences, and shall include the
30 following:

31 (1) Information on the nature of AIDS and its effects
32 on the human body.

33 (2) Information on how the human immunodeficiency
34 virus (HIV) is and is not transmitted, including
35 information on activities that present the highest risk of
36 HIV infection.

37 (3) Discussion of methods to reduce the risk of HIV
38 infection. This instruction shall emphasize that sexual
39 abstinence, monogamy, the avoidance of multiple sexual
40 partners, and abstinence from intravenous drug use are

the most effective means for AIDS prevention, but shall also include statistics based upon the latest medical information citing the failure and success rates of condoms and other contraceptives in preventing sexually transmitted HIV infection and information on other methods that may reduce the risk of HIV transmission from intravenous drug use. Nothing in this section shall be construed to supersede Section 51553.

(4) Discussion of the public health issues associated with AIDS.

(5) Information on local resources for HIV testing and medical care.

(6) Development of refusal skills to assist pupils to ~~overcome~~ *in overcoming* peer pressure and ~~use~~ *using* effective decisionmaking skills to avoid high-risk activities.

(7) Discussion about societal views on AIDS, including stereotypes and myths regarding persons with AIDS. This instruction shall emphasize compassion for persons suffering from debilitating handicaps and terminal diseases, ~~like~~ *such as* AIDS.

(c) AIDS prevention instruction may not be conducted in a manner that advocates drug use, a particular sexual practice, or sexual activities. AIDS prevention instruction shall be consistent with Section 51553.

(d) At the beginning of each school year or, ~~with respect to~~ *for* a pupil who enrolls in a school after the beginning of the school year, at the time of that pupil's enrollment, the governing board of each school district, each county board of education, and each county superintendent of schools, as applicable, shall provide the parent or guardian of each pupil in grades 7 to 12, inclusive, or the equivalent thereof, with written notice explaining the purpose of the AIDS prevention instruction and information stating the ~~parent~~ *parent's* or guardian's right to request a copy of this section and Section 51553, related to AIDS prevention instruction. The governing board of each school district, each county board of education, and each county superintendent of

1 schools, as applicable, shall keep on file copies of this
2 section and Section 51553. The Superintendent of Public
3 Instruction shall provide the parent or guardian of each
4 pupil in grades 7 to 12, inclusive, or the equivalent
5 thereof, in the State Schools for the Handicapped with
6 written notice explaining the purpose of the AIDS
7 prevention instruction.

8 (1) The notice shall specify that any parent or
9 guardian may request that his or her child or ward not
10 receive instruction in AIDS prevention. No pupil shall
11 attend the AIDS prevention instruction if a written
12 request that he or she not attend has been received by the
13 school. For the governing boards of school districts, this
14 notification shall accompany the reporting of rights and
15 responsibilities required by Section 48980.

16 (2) If authorized by the school district governing
17 board, a school district may require parental consent
18 prior to providing instruction on AIDS prevention to any
19 minor pupil.

20 (3) ~~Any time~~ *At any time that* an outside organization
21 or guest speaker is scheduled to deliver AIDS prevention
22 instruction, or ~~any time~~ *anytime* an assembly is held to
23 deliver AIDS prevention instruction, notification shall be
24 sent to the ~~pupil's~~ *pupils'* parents or legal guardians
25 through regular United States mail, or any other method
26 that the school district, county board of education, or
27 county superintendent of schools, as applicable,
28 commonly uses to communicate individually in writing to
29 all parents or guardians, at the beginning of the school
30 year or, with respect to a pupil who enrolls in a school
31 after the beginning of the school year, at the time of that
32 pupil's enrollment. If arrangements for this instruction
33 are made after these occurrences, notice shall be mailed,
34 or provided by the alternative method of notification
35 otherwise commonly used, no fewer than 10, and no more
36 than 15, days before the instruction is delivered.
37 Notification sent pursuant to this paragraph shall include
38 the date of the instruction, the name of the organization
39 or affiliation of each guest speaker, and information
40 stating the ~~parent~~ *parent's* or guardian's right to request

1 a copy of this section and Section 51553, related to AIDS
2 prevention instruction. The governing board of each
3 school district, each county board of education, and each
4 county superintendent of schools, as applicable, shall
5 keep on file copies of this section and Section 51553.

6 (e) All school districts shall ensure all of the following:

7 (1) That instructional materials related to this
8 instruction are available.

9 (2) That these instructional materials are appropriate
10 for use with pupils of various ages and learning abilities.

11 (3) That these instructional materials may be used
12 effectively with pupils from a variety of ethnic, cultural,
13 and linguistic backgrounds, and *pupils with* special needs.

14 (f) A pupil shall not be subject to disciplinary action,
15 academic penalty, or other sanction if the pupil's parent
16 or guardian declines to permit the pupil to receive the
17 instruction described in subdivision (a) and the pupil
18 does not receive the instruction.

19 (g) While the instruction described in subdivision (a)
20 is being delivered, an alternative educational activity
21 shall be made available to pupils whose parents or
22 guardians have requested that they not receive the
23 instruction described in subdivision (a).

24 SEC. 35. Section 51554 of the Education Code is
25 amended to read:

26 51554. (a) Unless a pupil's parent or guardian has
27 been sent written notification through regular United
28 States mail, or any other method that the school district,
29 county board of education, or county superintendent of
30 schools, as applicable, commonly uses to communicate
31 individually in writing to all parents or guardians, at the
32 beginning of the school year or, with respect to a pupil
33 who enrolls in a school after the beginning of the school
34 year, at the time of that pupil's enrollment, a pupil shall
35 not receive instruction on sexually transmitted diseases,
36 AIDS, human sexuality, or family life; that is delivered by
37 an outside organization or guest speakers brought in
38 specifically to provide that instruction, whether the guest
39 speakers are brought in to lecture, distribute information,
40 show a videotape, act out, conduct an activity involving

1 pupil participation, or provide audio material on these
2 subjects. Notification sent pursuant to this section shall
3 include the date of the instruction, the name of the
4 organization or affiliation of each guest speaker, and
5 information stating the ~~parent~~ *parent's* or guardian's
6 right to request a copy of Sections 51201.5 and 51553,
7 related to AIDS prevention instruction. The governing
8 board of each school district, each county board of
9 education, and each county superintendent of schools, as
10 applicable, shall keep on file copies of this section and
11 Section 51553. If arrangements for this instruction are
12 made after the written notice required by this section is
13 sent, notice of instruction to be delivered by outside
14 organizations or guest speakers shall be mailed, or
15 provided by the alternative method of notification
16 otherwise commonly used, no fewer than 10, and no more
17 than 15, days before the instruction is delivered. For
18 purposes of this subdivision, "instruction" includes
19 instruction delivered in an individual classroom, before
20 combined classes, or in assemblies.

21 (b) In the case of instruction that involves
22 presentations on sexually transmitted diseases, AIDS,
23 human sexuality, or family life delivered in an assembly,
24 a pupil shall not receive that instruction if a teacher
25 employed by the school district or administrator
26 employed by the school district delivers that instruction
27 unless the pupil's parent or guardian is notified through
28 regular United States mail, or any other method that the
29 school district, county board of education, or county
30 superintendent of schools, as applicable, commonly uses
31 to communicate individually in writing to all parents or
32 guardians, about the instruction at the beginning of the
33 school year or, with respect to a pupil who enrolls in a
34 school after the beginning of the school year, at the time
35 of that pupil's enrollment. If arrangements for this
36 instruction are made after these occurrences, notice shall
37 be provided no fewer than 10, and no more than 15, days
38 before the instruction is delivered. For purposes of this
39 subdivision, "instruction" includes oral presentations,
40 visual presentations, and activities.

(c) A pupil shall not be subject to a disciplinary action, academic penalty, or other sanction if the pupil's parent or guardian declines to permit the pupil to receive the instruction described in subdivision (a) or (b) and the pupil does not receive the instruction.

(d) During the period of time instruction described in subdivision (a) or (b) is being delivered, an alternative educational activity shall be made available to pupils whose parents or guardians have requested that they not receive the instruction described in subdivision (a) or (b).

SEC. 36. Section 51555 of the Education Code is amended to read:

51555. Before a pupil who is enrolled in kindergarten or any of grades 1 to 6, inclusive, receives instruction on sexually transmitted diseases, AIDS, human sexuality, or family life, the governing board of each school district, each county board of education, and each county superintendent of schools, as applicable, shall provide the parent or guardian of each pupil with written notice explaining that the instruction will be given and information stating the ~~parent~~ parent's or guardian's right to request a copy of Sections 51201.5 and 51553, related to AIDS prevention instruction. The governing board of each school district, each county board of education, and each county superintendent of schools, as applicable, shall keep on file copies of this section and Section 51553. Sending the required notice through the regular United States mail, or *by* any other method that the school district, county board of education, or county superintendent of schools, as applicable, commonly uses to communicate individually in writing to all parents or guardians, meets the notification requirement of this paragraph.

SEC. 37. Section 51871 of the Education Code is amended to read:

51871. (a) The California Technology Assistance Project shall be established by the State Department of Education to administer a regionalized network of technical assistance to schools and school districts on the

1 implementation of education technology as set forth in
2 policies of the State Board of Education. The California
3 Technology Assistance Project shall be composed of
4 regional consortia that will work collaboratively with
5 school districts and county offices of education in order to
6 meet locally defined technology-based needs, as
7 identified in the certified technology plans for their client
8 school districts, including, but not necessarily limited to,
9 all of the following areas:

10 (1) Staff development.

11 (2) Learning resources.

12 (3) Hardware.

13 (4) Telecommunications infrastructure.

14 (5) Technical assistance to school districts in
15 developing a support system to operate and maintain an
16 education technology infrastructure, including
17 improving pupil recordkeeping and tracking related to
18 pupil instruction.

19 (6) Coordination with other federal, state, and local
20 programs.

21 (7) Funding.

22 (b) The State Board of Education shall award grants to
23 fund a school district or county office of education in each
24 region of the California Technology Assistance Project to
25 act as the lead agency to administer the services of that
26 region. The term of a grant awarded pursuant to this
27 section may not exceed three years. Grant funding may
28 be awarded and received for subsequent terms of three
29 years as provided in this section. The lead agency shall be
30 chosen through a process based on all of the following:

31 (1) Knowledge of technology.

32 (2) Technology planning and technical assistance.

33 (3) A proven record of success in providing staff
34 development in technology and curriculum integration.

35 (4) A demonstrated ability to work collaboratively
36 with school districts, county offices of education, and
37 businesses in the region.

38 (5) The ability to deliver services specified in this
39 article to all school districts and county offices of
40 education in ~~their~~ *its* region.

1 (6) The degree of support for the application by school
2 districts and county offices of education in the region.

3 (7) Review of the annual report of the services
4 provided by the lead agency submitted to the State Board
5 of Education and school districts and county offices of
6 education within the California Technology Assistance
7 Project region. School districts and county offices of
8 education within a California Technology Assistance
9 Project region shall have the opportunity to comment on
10 the report.

11 (c) To receive funding for the second and third year
12 of a grant awarded pursuant to subdivision (b), a lead
13 agency shall submit an annual report to the State Board
14 of Education for approval that describes the services
15 provided, the persons served, and the funds expended for
16 those services in the prior year. School districts and
17 county offices of education within the California
18 Technology Assistance Project region shall have an
19 opportunity to comment on the report. The State
20 Department of Education shall release grant funding for
21 a second or third year only after the annual report has
22 been approved by the State Board of Education.

23 (d) Funding to support the regional education
24 technology services provided by the California
25 Technology Assistance Project shall be provided through
26 the annual Budget Act. Funding of the regional lead
27 agencies shall be approved by the State Board of
28 Education based on adopted guidelines.

29 SEC. 38. Section 52122 of the Education Code is
30 amended to read:

31 52122. (a) Except as otherwise provided by Section
32 52123, any school district that maintains any kindergarten
33 or any of grades 1 to 3, inclusive, may apply to the
34 Superintendent of Public Instruction for an
35 apportionment to implement a class size reduction
36 program in that school district in kindergarten and any of
37 the grades designated in this chapter.

38 (b) An application submitted pursuant to this chapter
39 shall identify both of the following:

1 (1) Each class that will participate in the Class Size
2 Reduction Program.

3 (2) For each class that will participate in the Class Size
4 Reduction Program, whether that class will operate
5 under Option One or Option Two:

6 (A) (i) Option One: A school district shall provide a
7 reduced class size for all pupils in each classroom for the
8 full regular schoolday in each grade level for which
9 funding is claimed. For the purposes of this chapter, “full
10 regular schoolday” means a substantial majority of the
11 instructional minutes per day, but shall permit limited
12 periods of time during which pupils are brought together
13 for a particular phase of education in groups that are
14 larger than 20 pupils per certificated teacher. It is the
15 intent of the Legislature that those limited periods of time
16 be kept to a minimum and that instruction in reading and
17 mathematics not be delivered during those limited
18 periods of time. For the purposes of this subparagraph,
19 “class” ~~shall be~~ *is* defined in the same manner as provided
20 in the regulations adopted by the Superintendent of
21 Public Instruction prior to July 1, 1996, pursuant to
22 Sections 41376 and 41378 (subdivision (a) of Section 15103
23 of Title 5 of the California Code of Regulations).

24 (ii) The purpose of the Class Size Reduction Program
25 is to ensure that children in public school in kindergarten
26 and grades 1 to 3, inclusive, receive instruction in
27 classrooms where there are not more than 20 ~~students~~
28 *pupils*. In order to qualify for funding pursuant to this
29 chapter, each class in the Class Size Reduction Program
30 shall be maintained with an annual average class size of
31 not more than 20 pupils for the instructional time ~~which~~
32 *that* qualifies the class for funding pursuant to this
33 chapter. Nothing in this chapter shall be construed to
34 prohibit the class size from exceeding 20 pupils on any
35 particular day, provided *that* the average class size for the
36 school year does not exceed 20.

37 (B) (i) Option Two: A school district shall provide a
38 reduced class size for all pupils in each classroom for at
39 least one-half of the instructional minutes offered per day
40 in each grade level for which funding is claimed. School

1 districts selecting this option shall primarily devote those
2 instructional minutes to the subject areas of reading and
3 mathematics. For the purposes of this subparagraph,
4 “class” ~~shall be~~ *is* defined in the same manner as provided
5 in the regulations adopted by the Superintendent of
6 Public Instruction prior to July 1, 1996, pursuant to
7 Sections 41376 and 41378 (subdivision (a) of Section 15103
8 of Title 5 of the California Code of Regulations).

9 (ii) The purpose of the Class Size Reduction Program
10 is to ensure that children in public school in kindergarten
11 and grades 1 to 3, inclusive, receive instruction in
12 classrooms where there are not more than 20 ~~students~~
13 *pupils*. In order to qualify for funding pursuant to this
14 chapter, each class in the Class Size Reduction Program
15 shall be maintained with an annual average class size of
16 not more than 20 pupils for the instructional time ~~which~~
17 *that* qualifies the class for funding pursuant to this
18 chapter. Nothing in this chapter shall be construed to
19 prohibit the class size from exceeding 20 pupils on any
20 particular day, provided *that* the average class size for the
21 school year does not exceed 20.

22 (c) A school district that intends to implement a Class
23 Size Reduction Program for the 1996–97 school year shall
24 submit an application for funds pursuant to this chapter
25 to the Superintendent of Public Instruction not later than
26 November 1, 1996. To receive the total amount of funding
27 in the 1996–97 school year for which the school district is
28 eligible pursuant to Section 52126, a school district shall
29 implement the Class Size Reduction Program by
30 February 16, 1997, within the meaning of paragraph (2)
31 of subdivision (b).

32 (d) A school district that intends to implement or
33 continue to implement a Class Size Reduction Program
34 for the 1997–98 school year and any subsequent school
35 year shall submit an application for funding pursuant to
36 this chapter to the Superintendent of Public Instruction
37 not later than 90 days after the annual Budget Act is
38 chaptered, unless otherwise specified in regulations
39 adopted by the State Board of Education.

(e) For the 1997–98 school year, a school district that is either implementing or expanding a class size reduction program pursuant to this chapter may receive funding pursuant to this chapter even if the new classes for which funding is sought are not implemented at the beginning of the 1997–98 school year, provided that, for each new class in the Class Size Reduction Program, all of the following criteria are met:

(1) The teacher for each new class is hired and placed on the school district’s payroll by November 1, 1997.

(2) Each teacher for a new class has begun to receive the training required by this chapter on or before February 16, 1998.

(3) All other requirements of this chapter are satisfied by February 16, 1998, and continue to be satisfied for the remainder of the 1997–98 school year.

(f) For the 1997–98 school year, the number of new classes in the Class Size Reduction Program is the number of classes satisfying the requirements of this chapter minus the number of classes funded in the Class Size Reduction Program pursuant to this chapter in the 1996–97 school year.

(g) Any school district that chooses to reduce class size through the use of an early-late instructional program is ineligible to also use Section 46205, relating to the computation of instructional time for purposes of the Incentive for Longer Instructional Day and Year, in any grade level for which class size reduction funding is received pursuant to this chapter; provided, however, that any school district that operated under Section 46205 prior to July 1, 1996, may receive class size reduction funding pursuant to Option One in any grade level for which class size reduction funding would otherwise be received pursuant to Option One.

SEC. 39. Section 54745 of the Education Code is amended to read:

54745. (a) In the administration of the Cal-SAFE program, the following provisions shall apply:

1 (1) Participation by a school district or county
2 superintendent of schools in the Cal-SAFE program is
3 voluntary.

4 (2) The governing board of a school district or county
5 superintendent of schools may individually, or jointly as
6 a consortium of governing boards of school districts or
7 county superintendents of schools, or both, submit an
8 application to the State Department of Education in the
9 manner, form, and date specified by the department to
10 establish and maintain a Cal-SAFE program.

11 (3) A school district or county superintendent of
12 schools, alone or as a member of a consortium of school
13 districts or county superintendents of schools, or both,
14 approved to implement the Cal-SAFE program shall be
15 funded as one program to be operated at one or multiple
16 sites depending upon the need within the service area.

17 (4) Notwithstanding any other provision of law, a
18 school district or county superintendent of schools
19 operating a School Age Parent and Infant Development
20 Program pursuant to Article 17 (commencing with
21 Section 8390) of Chapter 2 of Part 6, a Pregnant Minors
22 Program pursuant to Chapter 6 (commencing with
23 Section 8900) of Part 6 and Section 2551.3, or a Pregnant
24 and Lactating Students Program pursuant to Sections
25 49553 and 49559, as those provisions existed prior to the
26 operative date of the act that adds this article, or any
27 combination thereof, that chooses to participate in the
28 Cal-SAFE program shall have priority for Cal-SAFE
29 program funding for an amount up to the dollar amount
30 provided under those provisions in the fiscal year prior to
31 participation in the Cal-SAFE program, provided *that* an
32 application is submitted and approved.

33 (5) If a school district or county superintendent of
34 schools operating a School Age Parent and Infant
35 Development Program, a Pregnant Minors Program, or
36 a Pregnant and Lactating Students Program, or any
37 combination thereof, chooses not to participate in the
38 Cal-SAFE program, the funding it would have received
39 for the operation of those programs shall be redirected to
40 the Cal-SAFE program and the school district or county

1 superintendent of schools may apply in a subsequent
2 school year to operate a Cal-SAFE program.

3 (6) A school district or county superintendent of
4 schools that terminates its Cal-SAFE program may
5 reapply to establish a Cal-SAFE program.

6 (7) In order to continue implementation of the
7 Cal-SAFE program beyond the initial three years of
8 funding, each funded agency shall be reviewed by the
9 department to determine progress towards achieving the
10 goals set forth in Section 54742. Thereafter, funded
11 agencies shall be reviewed and reauthorized every five
12 years based upon a process determined by the
13 department to continue implementation of a Cal-SAFE
14 program.

15 (b) All of the following requirements shall apply to an
16 application for the Cal-SAFE program:

17 (1) The governing board of a participating local
18 education agency shall adopt a policy or resolution
19 declaring its commitment to provide a comprehensive,
20 continuous, community-linked program for pregnant
21 and parenting pupils and their children that reflects the
22 cultural and linguistic diversity of the community.

23 (2) The local education agency shall provide assurance
24 for participation in the development of the County
25 Service Coordination Plan as described in Section 54744.

26 (3) A school district or county superintendent of
27 schools shall agree to participate in the data collection
28 and evaluation of the Cal-SAFE program.

29 (c) To implement a Cal-SAFE program, the funded
30 school district, county superintendent of schools, or
31 consortium of school districts or county superintendents
32 of schools, or both, shall meet all of the following criteria:

33 (1) Be in compliance with Title IX of the Education
34 Amendments of 1972 Regulations.

35 (2) Ensure that enrolled pupils retain their right to
36 participate in the regular school or educational
37 alternative programs. School placement and instructional
38 strategies shall be based upon the needs and styles of
39 learning of the individual pupils. The classroom setting
40 shall be the preferred instructional strategy unless an

1 alternative is necessary to meet the needs of the
2 individual parent, child, or both.

3 (3) Enroll pupils into the Cal-SAFE program on an
4 open entry and open exit basis.

5 (4) Provide a quality education program to pupils in a
6 supportive and accommodating learning environment
7 with appropriate classroom strategies to ensure school
8 access and academic credit for all work completed.

9 (5) Provide a parenting education and life skills class
10 to enrolled pupils.

11 (6) Make maximum utilization of available programs
12 and facilities to serve pregnant and parenting pupils and
13 their children.

14 (7) Provide a quality child care and development
15 program for the children of enrolled teen parents located
16 on or near the schoolsite.

17 (8) Make maximum utilization of its local school food
18 service program.

19 (9) Provide special school nutrition supplements, as
20 defined by subdivision (b) of Section 49553, to pregnant
21 and lactating ~~students~~ *pupils*.

22 (10) Enter into formal partnership agreements, as
23 necessary, with community-based organizations and
24 other governmental agencies to assist pupils in accessing
25 support services.

26 (11) Provide staff development and community
27 outreach in order to establish a positive learning
28 environment and school policies supportive of pregnant
29 and parenting pupils' academic achievement and to
30 promote the healthy development of their children.

31 (12) Maintain an annual program budget and
32 expenditure report to document that funds are expended
33 pursuant to Section 54749.

34 (13) Assess no fees to enrolled pupils or their families
35 for services provided through the Cal-SAFE program.

36 (14) Establish and maintain a data base in the manner
37 and form prescribed by the State Department of
38 Education for purposes of program evaluation.

39 SEC. 40. Section 54748 of the Education Code is
40 amended to read:

1 54748. The duties of the State Department of
2 Education include all of the following:

3 (a) Provision of technical assistance, focused upon
4 transition into the Cal-SAFE program, to school districts
5 and county superintendents of schools currently
6 operating a School Age Parent and Infant Development
7 Program, a Pregnant Minors Program, or a Pregnant and
8 Lactating Students Program, or any combination thereof.

9 (b) Provision of technical assistance to school districts
10 and county superintendents of schools ~~which~~ *that* do not
11 currently operate a School Age Parent and Infant
12 Development Program, a Pregnant Minors Program, or
13 a Pregnant and Lactating Students Program as defined by
14 subdivision (a) of Section 54745.

15 (c) Identification and sharing of information on best
16 practices across program sites.

17 (d) Development of benchmarks to determine to
18 what degree ~~students~~ *pupils* and children enrolled in the
19 Cal-SAFE program attain the program goals.

20 (e) Consultation with local education agency
21 representatives and others, as appropriate, to develop
22 strategies for implementation of the Cal-SAFE program.

23 (f) Determination of areas in the state where there are
24 pupils who are most in need or pupils who are least likely
25 to access services on their own if there are not enough
26 resources to serve all eligible pupils.

27 (g) Development of an application process and
28 approval of local education agencies to implement a
29 Cal-SAFE program.

30 (h) Development of operating guidelines for
31 implementing an effective Cal-SAFE program.

32 (i) Development of guidelines for fiscal reporting.

33 (j) Coordination with other state agencies that
34 administer teen pregnancy prevention and intervention
35 programs.

36 (k) Development of procedures to conduct program
37 evaluation and monitoring, as appropriate.

38 (l) Commencing March 1, 2004, and every five years
39 thereafter, preparation and submission of a report to the
40 Joint Legislative Budget Committee and appropriate

1 policy and fiscal committees of the Legislature. The
2 report shall include data, analysis of data, and an
3 evaluation of the Cal-SAFE program.

4 SEC. 41. Section 54761.3 of the Education Code is
5 amended to read:

6 54761.3. Notwithstanding any other provision of law,
7 a school district that chose to designate home-to-school
8 transportation as the program to which a supplemental
9 grant was to be added, thereby increasing its
10 home-to-school transportation allowance, may, for the
11 1996–97 fiscal year, transfer into another categorical
12 education program account set forth in clause (i) of
13 subparagraph (B) of paragraph (1) of subdivision (a) of
14 Section 54761 the amount ~~that~~ *by which* the school
15 district's home-to-school transportation allowance for the
16 1996–97 fiscal year exceeded its approved home-to-school
17 transportation costs for the 1995–96 fiscal year. The
18 amount transferred pursuant to this section may not
19 exceed the amount of supplemental grant funding that
20 was added to the home-to-school transportation
21 allowance of the school district. In a manner prescribed
22 by the Superintendent of Public Instruction, eligible
23 school districts shall request, no later than February 1,
24 1999, that the Superintendent of Public Instruction
25 initiate the transfer. The request shall designate the
26 program or programs to which the supplemental grant
27 funding is to be transferred. The Superintendent of
28 Public Instruction shall adjust program allocations as
29 requested.

30 SEC. 42. Section 60603 of the Education Code is
31 amended to read:

32 60603. As used in this chapter:

33 (a) "Achievement test" means any standardized test
34 that measures the level of performance that a pupil has
35 achieved in the core curriculum areas.

36 (b) "Assessment of applied academic skills" means a
37 form of assessment that requires pupils to demonstrate
38 their knowledge of, and ability to apply, academic
39 knowledge and skills in order to solve problems and
40 communicate. It may include, but is not limited to,

1 writing an essay response to a question, conducting an
2 experiment, or constructing a diagram or model. An
3 assessment of applied academic skills may not include
4 assessments of personal behavioral standards or skills,
5 including, but not limited to, honesty, sociability, ethics,
6 or self-esteem.

7 (c) “Basic academic skills” means those skills in the
8 subject areas of reading, spelling, written expression, and
9 mathematics that provide the necessary foundation for
10 mastery of more complex intellectual abilities, including
11 the synthesis and application of knowledge.

12 (d) “Content standards” means the specific academic
13 knowledge, skills, and abilities that all public schools in
14 this state are expected to teach and all pupils expected to
15 learn in each of the core curriculum areas, at each grade
16 level tested.

17 (e) “Core curriculum areas” means the areas of
18 reading, writing, mathematics, history-social science, and
19 science.

20 (f) “Direct writing assessment” means an assessment
21 of applied academic skills that requires pupils to use
22 written expression to demonstrate writing skills,
23 including writing mechanics, grammar, punctuation, and
24 spelling.

25 (g) “End of course exam” means a comprehensive and
26 challenging assessment of pupil achievement in a
27 particular subject area or discipline such as the Golden
28 State Exams.

29 (h) “Performance standards” are standards that
30 define various levels of competence at each grade level
31 in each of the curriculum areas for which content
32 standards are established. Performance standards gauge
33 the degree to which a ~~student~~ *pupil* has met the content
34 standards and the degree to which a school or school
35 district has met the content standards.

36 (i) “Publisher” means a commercial publisher or any
37 other public or private entity, other than the State
38 Department of Education, which is able to provide tests
39 or test items that meet the requirements of this chapter.



(j) “Statewide pupil assessment program” means the systematic achievement testing of pupils in grades 2 to 11, inclusive, pursuant to the standardized testing and reporting program under Article 4 (commencing with Section 60640) and the assessment of basic academic skills and applied academic skills, administered to pupils in grade levels specified in subdivision (c) of Section 60605, required by this chapter in all schools within each school district by means of tests designated by the State Board of Education.

SEC. 43. Section 60640 of the Education Code is amended to read:

60640. (a) There is hereby established the Standardized Testing and Reporting Program, to be known as the STAR Program.

(b) Commencing in the 1997–98 fiscal year and each fiscal year thereafter, and from the funds available for that purpose, each school district, charter school, and county office of education shall administer to each of its pupils in grades 2 to 11, inclusive, before May 15, the achievement test designated by the State Board of Education pursuant to Section 60642.

(c) The publisher and the school district shall provide two makeup days for the testing of previously absent pupils no later than May 25.

(d) The governing board of the school district may administer achievement tests in kindergarten, and grade 1 or 12, or both, as it deems appropriate.

(e) Individuals with exceptional needs who have an explicit provision in their individualized education program that exempts them from the testing requirement of subdivision (b) shall be so exempt.

(f) At the school district’s option, pupils of limited English proficiency who are enrolled in any of grades 2 to 11, inclusive, may take a second achievement test in their primary language. Primary language tests administered pursuant to this subdivision and subdivision (g) shall be subject to the requirements of subdivisions (b), (c), (d), and (e) of Section 60641. These primary language tests shall produce individual pupil scores that are valid and

1 reliable. Notwithstanding any other provision of law, the
2 State Board of Education shall designate for use, as part
3 of this program, a single primary language test in each
4 language for which such a test is available for grades 2 to
5 11, inclusive, no later than November 14, 1998, pursuant
6 to the process used for designation of the assessment
7 chosen in the 1997–98 fiscal year, as specified in Section
8 60642 and 60643, as applicable.

9 (g) In addition to the test required by subdivision (b),
10 pupils of limited English proficiency who are enrolled in
11 any of grades 2 to 11, inclusive, shall be required to take
12 a test in their primary language if such a test is available,
13 if less than 12 months ~~have~~ *has* elapsed after their initial
14 enrollment in any public school in the state.

15 (h) The Superintendent of Public Instruction shall
16 apportion funds to enable school districts to meet the
17 requirements of subdivisions (b), (f), and (g). The State
18 Board of Education shall establish the amount of funding
19 to be apportioned. The amount to be apportioned shall be
20 up to eight dollars (\$8) per test administered to a pupil
21 in grades 2 to 11, inclusive.

22 (i) For the purposes of making the computations
23 required by Section 8 of Article XVI of the California
24 Constitution, the appropriation for the apportionments
25 made pursuant to subdivision (g) shall be deemed to be
26 “General Fund revenues appropriated for school
27 districts,” as defined in subdivision (c) of Section 41202—~~of~~
28 ~~the Education Code~~, for the applicable fiscal year, and
29 included within the “total allocations to school districts
30 and community college districts from General Fund
31 proceeds of taxes appropriated pursuant to Article
32 XIII B,” as defined in subdivision (e) of Section 41202—~~of~~
33 ~~the Education Code~~, for that fiscal year.

34 (j) As a condition to receiving an apportionment
35 pursuant to subdivision (h), a school district shall report
36 to the superintendent all of the following:

37 (1) The number of pupils enrolled in the school district
38 in grades 2 to 11, inclusive.



(2) The number of pupils to whom an achievement test was administered in grades 2 to 11, inclusive, in the school district.

(3) The number of pupils in paragraph (1) who were exempted from the test pursuant to subdivision (e) of Section 60640.

(4) The number of pupils in paragraph (1) who were exempted from the test at the request of their parents or guardians.

SEC. 44. Section 69621 of the Education Code is amended to read:

69621. For purposes of this article, the following definitions apply:

(a) “Child Development Permit” means a permit issued by the Commission on Teacher Credentialing that authorizes an individual to teach, instruct, or supervise in a licensed child care and development program.

(b) “Licensed children’s center” means a public school district-based, nonprofit community-based, or private proprietary program licensed by the State Department of Social Services under the health and safety requirements of Title 22 of the California Code of Regulations or administered by the State Department of Education under Title 5 of the California Code of Regulations. Licensed children’s centers include ~~federal~~ ~~and~~ *federally subsidized*, state-subsidized, and nonsubsidized child care and development programs serving children part day or full day.

SEC. 45. Section 89010 of the Education Code is amended to read:

89010. (a) Notwithstanding Article 1 (commencing with Section 11000) of Chapter 1 of Part 1 *of*, Article 2 (commencing with Section 14660) of Chapter 2 of Part 5.5 *of*, and Part 11 (commencing with Section 15850); *of*, Division 3 of Title 2 of the Government Code, or any other provision of law to the contrary, the trustees may sell improvements located on the land at the California State University, Monterey Bay campus that was transferred to the trustees from the United States of America and used for housing purposes, in circumstances in which the

1 underlying ownership in the land remains ~~in~~ *with* the
2 trustees. The trustees may exercise this authority without
3 the prior approval of any other state department or
4 agency.

5 (b) Moneys received by the trustees from the sale of
6 improvements authorized in this section shall be
7 deposited in local trust accounts. Moneys so deposited
8 may be invested in accordance with state law and,
9 notwithstanding Section 13340 *of the Government Code*,
10 are continuously appropriated without regard to fiscal
11 years for the purposes of building, maintaining, and
12 funding a campus of the California State University at
13 Monterey Bay through expenditures for improvements
14 to the campus, funding of scholarships, and other
15 academic purposes of the campus.

16 SEC. 46. Section 10262 of the Elections Code is
17 amended to read:

18 10262. The governing body of the city shall meet at
19 ~~their~~ *its* usual place of meeting on the second Tuesday
20 after the election to canvass the returns and to install the
21 newly elected officers. The body shall declare elected the
22 persons ~~having~~ *for whom* the highest number of votes
23 ~~given~~ *were cast* for each office. Upon the completion of
24 the canvass and before installing the new officers, the
25 body shall pass a resolution reciting the fact of the election
26 and ~~such~~ *the* other matters ~~as~~ *that* are enumerated in
27 Section 10264.

28 SEC. 47. Section 15112 of the Elections Code is
29 amended to read:

30 15112. When elections are consolidated pursuant to
31 Division 10 (commencing with Section 10000), and only
32 one form of ballot is used at the consolidated election, the
33 ballots cast by absent voters shall be counted only in
34 connection with elections to which absent voter
35 privileges have been extended by law.

36 Whenever the period of time within which absent
37 voters' ballots shall be received by the elections official in
38 order to be counted, as provided for any election by this
39 code or any other law of this state, is different from that
40 period of time provided for another election, and the

1 elections are consolidated and only one form of ballot
2 used for both elections, all absent voters' ballots issued for
3 the consolidated election may be counted for both
4 elections if received by the elections official within
5 whichever period of time ~~that is the~~ longer.

6 SEC. 48. Section 15151 of the Elections Code is
7 amended to read:

8 15151. (a) The elections official shall transmit the
9 semifinal official results to the Secretary of State in the
10 manner and according to the schedule prescribed by the
11 Secretary of State prior to each election, for the following:

12 (1) All candidates voted for statewide office.

13 (2) All candidates voted for the following offices:

14 (A) ~~State Member of the~~ Assembly.

15 (B) ~~State Member of the~~ Senate.

16 (C) Member of the United States House of
17 Representatives.

18 (D) Member of the State Board of Equalization.

19 (E) Justice of the Court of ~~Appeals~~ Appeal.

20 (3) All persons voted for at the presidential primary or
21 for electors of President and Vice President of the United
22 States.

23 (4) Statewide ballot measures.

24 (b) The elections official shall transmit the results to
25 the Secretary of State at intervals no greater than two
26 hours, following commencement of the semifinal official
27 canvass.

28 SEC. 49. Section 4252 of the Family Code is amended
29 to read:

30 4252. (a) One or more child support commissioners
31 shall be appointed by the superior court to perform the
32 duties specified in Section 4251. The child support
33 ~~commissioners~~ commissioners' first priority always shall
34 be to hear Title IV-D child support cases. The child
35 support commissioners shall specialize in hearing child
36 support cases, and their primary responsibility shall be to
37 hear Title IV-D child support cases. Child support
38 commissioner positions shall not be subject to the
39 limitation on other commissioner positions imposed upon
40 the counties by Article 13 (commencing with Section

1 70140) of Chapter 5 of Title 8 of the Government Code.
2 The number of child support commissioner positions
3 allotted to each superior court shall be determined by the
4 Judicial Council in accordance with caseload standards
5 developed pursuant to paragraph (3) of subdivision (b),
6 subject to appropriations in the annual Budget Act.

7 (b) The Judicial Council shall do all of the following:

8 (1) Establish minimum qualifications for child support
9 commissioners.

10 (2) Establish minimum educational and training
11 requirements for child support commissioners and other
12 court personnel that are assigned to Title IV-D child
13 support cases. Training programs shall include both
14 federal and state laws concerning child support; and
15 related issues.

16 (3) Establish caseload, case processing, and staffing
17 standards for child support commissioners on or before
18 April 1, 1997, which shall set forth the maximum number
19 of cases that each child support commissioner can
20 process. These standards shall be reviewed and, if
21 appropriate, revised by the Judicial Council every two
22 years.

23 (4) Adopt uniform rules of court and forms for use in
24 Title IV-D child support cases.

25 (5) Offer technical assistance to counties regarding
26 issues relating to implementation and operation of the
27 child support commissioner system, including assistance
28 related to funding, staffing, and the sharing of resources
29 between counties.

30 (6) Establish procedures for the distribution of
31 funding to the courts for child support commissioners,
32 family law facilitators pursuant to Division 14
33 (commencing with Section 10000), and related allowable
34 costs.

35 (7) Adopt rules that define the exceptional
36 circumstances in which judges may hear Title IV-D child
37 support matters as provided in subdivision (a) of Section
38 4251.

39 (8) Convene a workgroup, including representatives
40 of the State Department of Social Services, county district

1 attorneys, child support commissioners, child support
2 advocates, family law facilitators, attorneys engaging in
3 the private practice of family law, custodial and
4 noncustodial parents' organizations, and staff of the
5 Assembly and Senate Judiciary Committees, to advise the
6 Judicial Council in establishing criteria to evaluate the
7 success and identify any failures of the child support
8 commissioner system. The workgroup shall also provide
9 advice on how to establish successful outcomes for the
10 child support commissioner system created pursuant to
11 this article. The Judicial Council shall conduct an
12 evaluation and report the results of the evaluation and its
13 recommendations to the Legislature no later than
14 February 1, 2000. At a minimum, the evaluation shall
15 examine the ability of the child support commissioner
16 system to achieve the goals set forth in Section 4250. The
17 report shall include a fiscal impact statement estimating
18 the costs of implementing the recommendations.

19 (9) Undertake other actions as appropriate to ensure
20 the successful implementation and operation of child
21 support commissioners in the counties.

22 SEC. 50. Section 4351 of the Family Code is amended
23 to read:

24 4351. (a) In any proceeding where the court has
25 entered an order pursuant to Section 4350, the court may
26 also refer the matter of enforcement of the spousal
27 support order to the district attorney. The district
28 attorney may bring those enforcement proceedings as
29 the district attorney, in the district attorney's discretion,
30 determines to be appropriate.

31 (b) Notwithstanding subdivision (a), in any case in
32 which the district attorney is required to appear on behalf
33 of a welfare recipient in a proceeding to enforce an order
34 requiring payment of child support, the district attorney
35 shall also enforce any order requiring payment to the
36 welfare recipient of spousal support that is in arrears.

37 (c) Nothing in this section shall be construed to
38 prohibit the district attorney from bringing an action or
39 initiating process to enforce or punish the failure to obey
40 an order for spousal support under any provision of law

1 that empowers the district attorney to bring an action or
2 initiate a process, whether or not there has been a referral
3 by the court pursuant to this chapter.

4 (d) Any notice from the district attorney requesting a
5 meeting with the support obligor for any purpose
6 authorized under this part shall contain a statement
7 advising the support obligor of his or her right to have an
8 attorney present at the meeting.

9 SEC. 51. Section 4901 of the Family Code is amended
10 to read:

11 4901. ~~As used in this chapter, the~~ *The* following
12 definitions ~~shall apply to this chapter~~:

13 ~~(1)~~

14 (a) “Child” means an individual, whether over or
15 under the age of majority, who is, or is alleged to be, owed
16 a duty of support by the individual’s parent or who is, or
17 is alleged to be, the beneficiary of a support order
18 directed to the parent.

19 ~~(2)~~

20 (b) “Child support order” means a support order for
21 a child, including a child who has attained the age of
22 majority under the law of the issuing state.

23 ~~(3)~~

24 (c) “Duty of support” means an obligation imposed or
25 imposable by law to provide support for a child, spouse,
26 or former spouse, including an unsatisfied obligation to
27 provide support.

28 ~~(4)~~

29 (d) “Home state” means the state in which a child
30 lived with a parent or a person acting as parent for at least
31 six consecutive months immediately preceding the time
32 of filing of a petition or comparable pleading for support
33 and, if a child is less than six months old, the state in which
34 the child lived from birth with any of them. A period of
35 temporary absence of any of them is counted as part of
36 the six-month or other period.

37 ~~(5)~~

38 (e) “Income” includes earnings or other periodic
39 entitlements to money from any source and any other

1 property subject to withholding for support under the
2 laws of this state.

3 ~~(6)~~

4 (f) “Income-withholding order” means an earnings
5 assignment order for support, as defined in Section 5208,
6 or any other order or other legal process directed to an
7 obligor’s employer, or other debtor, to withhold from the
8 income of the obligor an amount owed for support.

9 ~~(7)~~

10 (g) “Initiating state” means a state from which a
11 proceeding is forwarded, or in which a proceeding is filed
12 for forwarding, to a responding state under this chapter
13 or a law or procedure substantially similar to this chapter,
14 the Uniform Reciprocal Enforcement of Support Act, or
15 the Revised Uniform Reciprocal Enforcement of Support
16 Act.

17 ~~(8)~~

18 (h) “Initiating tribunal” means the authorized
19 tribunal in an initiating state.

20 ~~(9)~~

21 (i) “Issuing state” means the state in which a tribunal
22 issues a support order or renders a judgment determining
23 parentage.

24 ~~(10)~~

25 (j) “Issuing tribunal” means the tribunal that issues a
26 support order or renders a judgment determining
27 parentage.

28 ~~(11)~~

29 (k) “Law” includes decisional and statutory law and
30 rules and regulations having the force of law.

31 ~~(12)~~

32 (l) “Obligee” means any of the following:

33 ~~(i)~~

34 (1) An individual to whom a duty of support is, or is
35 alleged to be, owed or in whose favor a support order has
36 been issued or a judgment determining parentage has
37 been rendered.

38 ~~(ii)~~

39 (2) A state or political subdivision to which the rights
40 under a duty of support or support order have been

1 assigned or which has independent claims based on its
2 provision of financial assistance to an individual obligee.

3 ~~(iii)~~

4 (3) An individual seeking a judgment determining
5 parentage of the individual's child.

6 ~~(13)~~

7 (m) "Obligor" means an individual, or the estate of a
8 decedent, ~~that~~ *who* satisfies any of the following criteria:

9 ~~(i)~~

10 (1) He or she owes or is alleged to owe a duty of
11 support.

12 ~~(ii)~~

13 (2) He or she is alleged, but has not been adjudicated
14 to be, a parent of a child.

15 ~~(iii)~~

16 (3) He or she is liable under a support order.

17 ~~(14)~~

18 (n) "Register" means to file a support order or
19 judgment determining parentage in the superior court in
20 any county in which enforcement of the order is sought.

21 ~~(15)~~

22 (o) "Registering tribunal" means a tribunal in which
23 a support order is registered.

24 ~~(16)~~

25 (p) "Responding state" means a state in which a
26 proceeding is filed or to which a proceeding is forwarded
27 for filing from an initiating state under this chapter or a
28 law or procedure substantially similar to this chapter, the
29 Uniform Reciprocal Enforcement of Support Act, or the
30 Revised Uniform Reciprocal Enforcement of Support
31 Act.

32 ~~(17)~~

33 (q) "Responding tribunal" means the authorized
34 tribunal in a responding state.

35 ~~(18)~~

36 (r) "Spousal support order" means a support order for
37 a spouse or former spouse of the obligor.

38 ~~(19)~~

39 (s) "State" means a state of the United States, the
40 District of Columbia, Puerto Rico, the United States

Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term “state” also includes both of the following:

~~(i)~~

(1) An Indian tribe.

~~(ii)~~

(2) A foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

~~(20)~~

(t) “Support enforcement agency” means a public official or agency authorized to seek any of the following:

~~(i)~~

(1) Enforcement of support orders or laws relating to the duty of support.

~~(ii)~~

(2) Establishment or modification of child support.

~~(iii)~~

(3) Determination of parentage.

~~(iv) To locate~~

(4) *Location of* obligors or their assets.

~~(21)~~

(u) “Support order” means a judgment, decree, or order, whether temporary, final, or subject to modification, for the benefit of a child, spouse, or former spouse, that provides for monetary support, health care, arrearages, or reimbursement, and may include related costs and fees, interest, income withholding, attorney’s fees, or other relief.

~~(22)~~

(v) “Tribunal” means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage.

SEC. 52. Section 6380 of the Family Code is amended to read:

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a

1 procedure, using existing systems, for the electronic
2 transmission of data, as described in subdivision (b), to
3 the Department of Justice. The data shall be
4 electronically transmitted through the California Law
5 Enforcement Telecommunications System (CLETS) of
6 the Department of Justice by law enforcement personnel,
7 or with the approval of the Department of Justice, court
8 personnel, or another appropriate agency capable of
9 maintaining and preserving the integrity of both the
10 CLETS and the Domestic Violence Protective Order
11 Registry, as described in subdivision (e). Data entry is
12 required to be entered only once under the requirements
13 of this section, unless the order is served at a later time.
14 A portion of all fees payable to the Department of Justice
15 under subdivision (a) of Section 1203.097 of the Penal
16 Code for the entry of the information required under this
17 section, based upon the proportion of the costs incurred
18 by the local agency and those incurred by the
19 Department of Justice, shall be transferred to the local
20 agency actually providing the data. All data with respect
21 to criminal court protective orders issued under
22 subdivision (g) of Section 136.2 of the Penal Code shall be
23 transmitted by the court or its designee within one
24 business day to law enforcement personnel by either one
25 of the following methods:

26 (1) Transmitting a physical copy of the order to a local
27 law enforcement agency authorized by the Department
28 of Justice to enter orders into CLETS.

29 (2) With the approval of the Department of Justice,
30 entering the order into CLETS directly.

31 (b) Upon the issuance of a protective order to which
32 this division applies pursuant to Section 6221, or the
33 issuance of a temporary restraining order or injunction
34 relating to harassment or domestic violence pursuant to
35 Section 527.6 or 527.8 of the Code of Civil Procedure, or
36 the issuance of a criminal court protective order under
37 subdivision (g) of Section 136.2 of the Penal Code, or the
38 issuance of a juvenile court restraining order related to
39 domestic violence pursuant to Section 213.5, 304, or 362.4
40 of the Welfare and Institutions Code, or upon registration

1 with the court clerk of a domestic violence protective
2 order issued by the court of another state, tribe, or
3 territory, and including any of the foregoing orders issued
4 in connection with an order for modification of a custody
5 or visitation order issued pursuant to a dissolution, legal
6 separation, nullity, or paternity proceeding, the
7 Department of Justice shall be immediately notified of
8 the contents of the order and the following information:

9 (1) The name, race, date of birth, and other personal
10 descriptive information of the respondent as required by
11 a form prescribed by the Department of Justice.

12 (2) The names of the protected persons.

13 (3) The date of issuance of the order.

14 (4) The duration or expiration date of the order.

15 (5) The terms and conditions of the protective order,
16 including stay-away, no-contact, residency exclusion,
17 custody, and visitation provisions of the order.

18 (6) The department or division number and the
19 address of the court.

20 (7) Whether or not the order was served upon the
21 respondent.

22 (8) The terms and conditions of any restrictions on the
23 ownership or possession of firearms.

24 All available information shall be included; however,
25 the inability to provide all categories of information shall
26 not delay the entry of the information available.

27 (c) The information conveyed to the Department of
28 Justice shall also indicate whether the respondent was
29 present in court to be informed of the contents of the
30 court order. The respondent's presence in court shall
31 provide proof of service of notice of the terms of the
32 protective order. The respondent's failure to appear shall
33 also be included in the information provided to the
34 Department of Justice.

35 (d) Immediately upon receipt of proof of service the
36 clerk of the court, and immediately after service any law
37 enforcement officer who served the protective order,
38 shall notify the Department of Justice, by electronic
39 transmission, of the service of the protective order,
40 including the name of the person who served the order

1 and, if that person is a law enforcement officer, the law
2 enforcement agency.

3 (e) The Department of Justice shall maintain a
4 Domestic Violence Protective Order Registry and shall
5 make available to court clerks and law enforcement
6 personnel, through computer access, all information
7 regarding the protective and restraining orders and
8 injunctions described in subdivision (b), whether or not
9 served upon the respondent.

10 (f) If a court issues a modification, extension, or
11 termination of a protective order, the transmitting
12 agency for the county shall immediately notify the
13 Department of Justice, by electronic transmission, of the
14 terms of the modification, extension, or termination.

15 (g) The Judicial Council shall assist local courts
16 charged with the responsibility for issuing protective
17 orders by developing informational packets describing
18 the general procedures for obtaining a domestic violence
19 restraining order and indicating the appropriate Judicial
20 Council forms, and shall include a design, that local courts
21 shall complete, that describes local court procedures and
22 maps to enable applicants to locate filing windows and
23 appropriate courts. The court clerk shall provide a fee
24 waiver form to all applicants for domestic violence
25 protective orders. The court clerk shall provide all
26 Judicial Council forms required by this chapter to
27 applicants free of charge. The informational packet shall
28 also contain a statement that the protective order is
29 enforceable in any state, territory, or reservation, and
30 general information about agencies in other jurisdictions
31 that may be contacted regarding enforcement of an order
32 issued by a court of this state.

33 (h) For the purposes of this part, “electronic
34 transmission” ~~shall include~~ *includes* computer access
35 through the California Law Enforcement
36 Telecommunications System (CLETS).

37 SEC. 53. Section 7572 of the Family Code is amended
38 to read:

39 7572. (a) The State Department of Social Services, in
40 consultation with the State Department of Health

1 Services, the California Association of Hospitals and
2 Health Systems, and other affected health provider
3 organizations, shall work cooperatively to develop
4 written materials to assist providers and parents in
5 complying with this chapter.

6 (b) The written materials for parents ~~which~~ shall be
7 attached to the form specified in Section 7574~~—and~~, *shall*
8 *be* provided to unmarried parents, *and* shall contain the
9 following information:

10 (1) ~~A~~ *That a* signed voluntary declaration of paternity
11 that is filed with the State Department of Social Services
12 legally establishes paternity.

13 (2) The legal rights and obligations of both parents and
14 the child that result from the establishment of paternity.

15 (3) An alleged father's constitutional rights to have the
16 issue of paternity decided by a court; to *receive* notice of
17 any hearing on the issue of paternity; to have an
18 opportunity to present his case to the court, including his
19 right to present and cross-examine witnesses; to have an
20 attorney represent him; and to have an attorney
21 appointed to represent him if he cannot afford one in a
22 paternity action filed by the district attorney.

23 (4) That by signing the voluntary declaration of
24 paternity, the father is voluntarily waiving his
25 constitutional rights.

26 (c) Parents shall also be given oral notice of the rights
27 and responsibilities specified in subdivision (b). Oral
28 notice may be accomplished through the use of audio or
29 videotape programs developed by the State Department
30 of Social Services to the extent permitted by federal law.

31 (d) The State Department of Social Services shall, free
32 of charge, make available to hospitals, clinics, and other
33 places of birth any and all informational and training
34 materials for the program under this chapter, as well as
35 the paternity declaration form. The State Department of
36 Social Services shall make training available to every
37 participating hospital, clinic, local registrar of births and
38 deaths, and other place of birth no later than June 30,
39 1999.

1 (e) The State Department of Social Services may
2 adopt regulations, including emergency regulations,
3 necessary to implement this chapter.

4 SEC. 54. Section 7575 of the Family Code is amended
5 to read:

6 7575. (a) Either parent may rescind the voluntary
7 declaration of paternity by filing a rescission form with
8 the State Department of Social Services within 60 days ~~of~~
9 *after* the date of execution of the declaration by the
10 attesting father or attesting mother, whichever signature
11 is later, unless a court order for custody, visitation, or child
12 support has been entered in an action in which the
13 signatory seeking to rescind was a party. The State
14 Department of Social Services shall develop a form to be
15 used by parents to rescind the declaration of paternity
16 and ~~instruction~~ *instructions* on how to complete and file
17 the rescission with the State Department of Social
18 Services. The form shall include a declaration under
19 penalty of perjury completed by the person filing the
20 rescission form that certifies that a copy of the rescission
21 form was sent by any form of mail requiring a return
22 receipt to the other person who signed the voluntary
23 declaration of paternity. A copy of the return receipt shall
24 be attached to the rescission form when filed with the
25 State Department of Social Services. The form and
26 instructions shall be written in simple, easy to understand
27 language and shall be made available at the local family
28 support office and the office of local registrar of births and
29 deaths.

30 (b) (1) Notwithstanding Section 7573, if the court
31 finds that the conclusions of all of the experts based upon
32 the results of the genetic tests performed pursuant to
33 Chapter 2 (commencing with Section 7550) are that the
34 man who signed the voluntary declaration is not the
35 father of the child, the court may set aside the voluntary
36 declaration of paternity.

37 (2) The notice of motion for genetic tests under this
38 section may be filed not later than two years ~~from~~ *after*
39 the date of the child's birth by either the mother or the
40 man who signed the voluntary declaration as the child's

1 father in an action to determine the existence or
2 nonexistence of the father and child relationship
3 pursuant to Section 7630 or in any action to establish an
4 order for child custody, visitation, or child support based
5 upon the voluntary declaration of paternity.

6 (3) The notice of motion for genetic tests pursuant to
7 this section shall be supported by a declaration under oath
8 submitted by the moving party stating the factual basis
9 for putting the issue of paternity before the court.

10 (c) (1) Nothing in this chapter shall be construed to
11 prejudice or bar the rights of either parent to file an
12 action or motion to set aside the voluntary declaration of
13 paternity on any of the grounds described in, and within
14 the time limits specified in, Section 473 of the Code of
15 Civil Procedure and Chapter 10 (commencing with
16 Section 2120) of Part 1 of Division 6. If the action or
17 motion to set aside the voluntary declaration of paternity
18 is ~~for~~ *based upon an act of* fraud or perjury, the act must
19 have induced the defrauded parent to sign the voluntary
20 declaration of paternity. If the action or motion to set
21 aside a judgment is required to be filed within a specified
22 time period under Section 473 of the Code of Civil
23 Procedure or Section 2122, the period within which the
24 action or motion to set aside the voluntary declaration of
25 paternity must be filed shall commence on the date that
26 the court makes a finding of paternity based upon the
27 voluntary declaration of paternity in an action for
28 custody, visitation, or child support.

29 (2) The parent seeking to set aside the voluntary
30 declaration of paternity shall have the burden of proof.

31 (3) Any order for custody, visitation, or child support
32 shall remain in effect until the court determines that the
33 voluntary declaration of paternity should be set aside,
34 subject to the court's power to modify the orders as
35 otherwise provided by law.

36 (4) Nothing in this section is intended to restrict a
37 court from acting as a court of equity.

38 (5) If the voluntary declaration of paternity is set aside
39 pursuant to paragraph (1), the court shall order that the
40 mother, child, and alleged father submit to genetic tests

1 pursuant to Chapter 2 (commencing with Section 7550).
2 If the court finds that the conclusions of all the experts, as
3 disclosed by the evidence based upon the genetic tests,
4 are that the person who executed the voluntary
5 declaration of paternity is not the father of the child, the
6 question of paternity shall be resolved accordingly. If the
7 person who executed the declaration as the father of the
8 child is not excluded as a possible father, the question of
9 paternity shall be resolved as otherwise provided by law.
10 If the person who executed the declaration of paternity
11 is ultimately determined to be the father of the child, any
12 child support that accrued under an order based upon the
13 voluntary declaration of paternity shall remain due and
14 owing.

15 (6) The Judicial Council shall develop the forms and
16 procedures necessary to effectuate this subdivision.

17 SEC. 55. Section 6420 of the Fish and Game Code is
18 amended to read:

19 6420. The Legislature finds and declares all of the
20 following:

21 (a) Declines in various southern California marine
22 species of fish have adversely affected the sport and
23 commercial fishing industry.

24 (b) Efforts to enhance these species through the
25 placement of ~~artificial~~ *artificial* reefs need to be
26 investigated.

27 (c) A program of artificial reef research and
28 development, including reef design, placement, and
29 monitoring, is in the public interest and can best be
30 accomplished under the administration of the
31 department with the cooperation and assistance of the
32 University of California, the California State University,
33 other established, appropriate academic institutions, and
34 other organizations with demonstrated expertise in the
35 field.

36 (d) A state artificial reef research and construction
37 program under the administration of the department is
38 necessary to coordinate ongoing studies and construction
39 of artificial reefs in waters of the state.



1 SEC. 56. Section 7151 of the Fish and Game Code is
2 amended to read:

3 7151. (a) Upon application to the department, the
4 following persons, ~~who~~ *if they* have not been convicted of
5 any violation of this code, shall be issued, free of any
6 charge or fee, a ~~free~~ sportfishing license, which is valid for
7 the calendar year of issue or, if issued after the beginning
8 of the year, for the remainder thereof, and which
9 authorizes the licensee to take any fish, reptile, or
10 ~~amphibia~~ *amphibian* anywhere in this state for purposes
11 other than profit:

12 (1) A blind person upon presentation of proof of
13 blindness. "Blind person" means a person with central
14 ~~vision~~ *visual* acuity of 20/200 or less in the better eye, with
15 the aid of the best possible correcting glasses, or central
16 visual acuity better than 20/200 if the widest diameter of
17 the remaining visual field is no greater than 20 degrees.
18 Proof of blindness shall be by certification from a qualified
19 licensed optometrist or ophthalmologist or by
20 presentation of a license issued pursuant to this paragraph
21 in the preceding license year.

22 (2) Every resident Native American who, in the
23 discretion of the department, is financially unable to pay
24 the fee required for the license.

25 (3) Upon certification by the person in charge of a
26 state hospital, a person who is a ward of the state and who
27 is a patient in, and resides in, the state hospital.

28 (4) Upon certification by the person in charge of ~~the~~
29 *a* regional center for the developmentally disabled, a
30 developmentally disabled person receiving services from
31 the regional center.

32 (5) A person who is a resident of the state and who is
33 so severely physically disabled as to be permanently
34 unable to move from place to place without the aid of a
35 wheelchair, walker, forearm crutches, or a comparable
36 mobility-related device. Proof of the disability shall be by
37 certification from a licensed physician and surgeon or,
38 beginning January 1, 1997, by presentation of a license
39 issued pursuant to this paragraph for the preceding year.

1 (b) Upon application to the department, the
2 department may issue, free of any charge or fee, a
3 sportfishing permit ~~to fish~~ to groups of mentally or
4 physically handicapped persons under the care of a
5 certified federal, state, county, city, or private licensed
6 care center, ~~as set forth~~ *that is a community care facility*
7 *as defined in subdivision (a) of Section 1502 of the Health*
8 *and Safety Code*, to organizations exempt from taxation
9 under Section 501(c)(3) of the federal Internal Revenue
10 Code, or to schools or school districts. Any organization
11 that applies for a group fishing permit shall provide
12 evidence that it is a legitimate private licensed care
13 center, tax-exempt organization, school, or school district.
14 The permit shall be issued to the person in charge of the
15 group and shall be in his or her possession when the group
16 is fishing. Employees of private licensed care centers,
17 tax-exempt organizations, schools, or school districts are
18 exempt from Section 7145 only while assisting physically
19 or mentally disabled persons fishing under the authority
20 of a valid permit issued pursuant to this section. The
21 permit shall include the location where the activity will
22 take place, the date or dates of the activity, and the
23 maximum number of people in the group. The
24 permit holder shall notify the local department office
25 before fishing and indicate where, when, and how long
26 the group will fish.

27 (c) On January 15 of each year, the department shall
28 determine the number of free sportfishing licenses issued
29 under subdivisions (a) and (b) to blind persons, indigent
30 resident Native Americans, wards of the state,
31 developmentally disabled persons, and physically
32 disabled persons.

33 (d) There shall be appropriated from the General
34 Fund a sum equal to two dollars (\$2) per free sportfishing
35 license issued under subdivisions (a) and (b), as
36 determined by the department pursuant to subdivision
37 (c). That sum may be appropriated annually in the
38 Budget Act for transfer to the Fish and Game
39 Preservation Fund and appropriated in the Budget Act

1 from the Fish and Game Preservation Fund to the
2 department for the purposes of this part.

3 SEC. 57. Section 221 of the Food and Agricultural
4 Code is amended to read:

5 221. The “Department of Food and Agriculture
6 Fund,” which is a special fund, is continued in existence.
7 Any money that is directed by law to be paid into the fund
8 shall be paid into it and, unless otherwise specifically
9 provided, shall be expended solely for the enforcement
10 of the law under which the money was derived. The
11 expenditure from the fund for the enforcement of any
12 law shall not, unless otherwise specifically provided,
13 exceed the amount of money that is credited to the fund
14 pursuant to the law.

15 Notwithstanding Section 13340 of the Government
16 Code, all money deposited in the fund under the
17 provisions enumerated below is hereby continuously
18 appropriated to the department without regard to fiscal
19 years for expenditure in carrying out the purposes for
20 which the money was deposited and for making the
21 refunds authorized by Section 302.

22 All money deposited in the fund under the provisions
23 enumerated below is hereby exempted from Sections
24 13320 to 13324, inclusive, of the Government Code:-

25 (a) Article 7 (commencing with Section 5821) and
26 Article 7.5 (commencing with Section 5850) of Chapter
27 8 of Part 1 of Division 4, Chapter 1 (commencing with
28 Section 6701) of Part 3 of Division 4, and Chapter 5
29 (commencing with Section 53301) of Division 18.

30 (b) Article 5 (commencing with Section 6001) of
31 Chapter 9 of Part 1 of Division 4.

32 (c) Article 4.5 (commencing with Section 6971) and
33 Article 5 (commencing with Section 6981) of Chapter 2
34 of Part 3 of Division 4.

35 (d) Chapter 4 (commencing with Section 14200),
36 Chapter 5 (commencing with Section 14501), and
37 Chapter 6 (commencing with Section 14901) of Division
38 7.

39 (e) Part 1 (commencing with Section 16301) and Part
40 2 (commencing with Section 17401) of Division 9.

1 (f) Sections 19225, 19227, 19312, and 19315.
2 (g) Division 10 (commencing with Section 20001).
3 (h) Division 11 (commencing with Section 23001).
4 (i) Part 4 (commencing with Section 27501) of
5 Division 12.
6 (j) Division 16 (commencing with Section 40501).
7 (k) Chapter 9 (commencing with Section 44971) of
8 Division 17.
9 (l) Chapter 1 (commencing with Section 52001) of
10 Division 18.
11 (m) Chapter 2 (commencing with Section 52251) of
12 Division 18.
13 (n) Chapter 3 (commencing with Section 52651) of
14 Division 18.
15 (o) Chapter 4 (commencing with Section 52851) of
16 Division 18.
17 (p) Chapter 6 (commencing with Section 55401),
18 Chapter 7 (commencing with Section 56101), and
19 Chapter 7.5 (commencing with Section 56701) of
20 Division 20.
21 (q) Section 58582.
22 (r) Chapter 1 (commencing with Section 61301),
23 Chapter 2 (commencing with Section 61801), and
24 Chapter 3 (commencing with Section 62700) of Part 3 of
25 Division 21.
26 (s) Chapter 5.5 (commencing with Section 12531) of
27 Division 5 of the Business and Professions Code.
28 (t) Chapter 7 (commencing with Section 12700) of
29 Division 5 of the Business and Professions Code.
30 (u) Chapter 14 (commencing with Section 13400) and
31 Chapter 15 (commencing with Section 13700) of Division
32 5 of the Business and Professions Code.
33 SEC. 58. Section 5852 of the Food and Agricultural
34 Code is amended to read:
35 5852. (a) The department may provide, upon
36 request, nonregulatory accreditation, analytical,
37 certification, diagnostic, inspection, quality assurance,
38 testing, and other nonregulatory services relating to
39 nursery stock, plants, seed, or other plant pests and
40 diseases on a charge-for-service basis or may accredit



1 private persons or business entities to perform those
2 services.

3 (b) To ensure that the activities performed by private
4 persons or business entities are valid and reliable, the
5 department shall adopt regulations to establish
6 accreditation criteria to govern its accreditation,
7 monitoring or auditing, and revocation of accreditation
8 activities. Any regulations adopted by the department
9 pursuant to this subdivision shall be consistent with
10 applicable federal law. The department may adopt by
11 reference any pertinent federal laws or regulations
12 pertaining to the accreditation of persons or business
13 entities for the performance of work required to certify
14 compliance with the quarantine, quality, and other
15 import requirements established by other states or
16 foreign countries. No private, nongovernmental entities
17 that perform diagnostic or field inspections for the
18 issuance of federal phytosanitary certificates shall be
19 accredited until federal rules are adopted that permit and
20 regulate those activities.

21 (c) ~~In order to~~ To retain accreditation, those persons
22 or business entities providing services described in
23 subdivision (a) shall agree to be monitored or assessed
24 and evaluated on a periodic basis by means of proficiency
25 testing or sample checking.

26 (d) It is unlawful for any person or business entity that
27 is not accredited by the department to make any
28 representation regarding accreditation by the
29 department. Any person or business entity that makes
30 that representation, without valid departmental
31 accreditation, may be enjoined from doing so by any
32 court of competent jurisdiction upon suit by the
33 department.

34 (e) To assure validity and reliability, the department
35 may specify, by order, the location or locations where the
36 services described in subdivision (a) will be provided.

37 (f) The department may establish, by regulation, a
38 schedule of charges to cover the department's costs for
39 specific services it provides. Charges for the accreditation
40 and monitoring of laboratories located outside the state

1 shall include the expenses for all required travel and per
2 diem and may include application, basic, initial, renewal,
3 and other charges that the department deems necessary
4 to cover its costs for accreditation and monitoring or
5 auditing for compliance. Funds collected through ~~cost~~
6 ~~recovery~~ *cost-recovery* charges are dedicated to, and
7 may only be used for, carrying out the activities and
8 functions specified in this article.

9 (g) Notwithstanding any other provision of this code
10 regarding the provision of the services described in
11 subdivision (a), orders issued by the department and
12 regulations establishing charges adopted by the secretary
13 pursuant to this section shall not be subject to review,
14 approval, or disapproval by the Office of Administrative
15 Law.

16 (h) Nothing in this section shall be construed to
17 interfere with or supersede any existing inspection,
18 quality assurance, or certification program conducted by
19 an agricultural trade or commodity organization, and this
20 section shall not be construed to require those programs
21 to be certified or accredited by the department.

22 SEC. 59. Section 14651 of the Food and Agricultural
23 Code is amended to read:

24 14651. (a) Unless otherwise specified in this chapter,
25 any violation of this chapter, or the regulations adopted
26 pursuant to this chapter, is a misdemeanor ~~which is~~,
27 punishable by a fine of not more than five hundred dollars
28 (\$500) for the first violation and not less than five
29 hundred dollars (\$500) for each subsequent violation.

30 (b) The director may, after hearing, refuse to issue or
31 renew, or may suspend or revoke, a license or registration
32 for any violation of this chapter or any regulation ~~which~~
33 *that* is adopted pursuant to this chapter.

34 (c) Upon calling a hearing, the director shall hand
35 deliver or mail a notice of the hearing to the licensee or
36 registrant specifying the time and place of the hearing at
37 least 10 days prior to the hearing. The hearing officer may
38 do any of the following:

39 (1) Administer oaths and take testimony.

(2) Issue subpoenas requiring the attendance of the licensee, registrant, or witnesses, together with books, records, memoranda, papers, and all other documents that may be pertinent to the case.

(3) Compel from the licensee or registrant and any witness the disclosure of all facts known to him or her regarding the case. In no instance shall any employee of the ~~Feed, Fertilizer, and Livestock Drugs Branch~~ *Agricultural Commodities and Regulatory Services* serve as the hearing officer in any hearing conducted pursuant to this section.

(d) Any ~~person~~ *person* who is denied a license, whose license is not renewed, or whose license is suspended or revoked pursuant to this section may appeal to the director.

SEC. 60. Section 20797 of the Food and Agricultural Code is amended to read:

20797. Any person who loses his or her right to use a brand as a ~~results~~ *result* of the determination of the chief pursuant to this article may appeal to the secretary within 15 days. The secretary may affirm, reverse, or modify the determination of the chief.

SEC. 61. Section 31753 of the Food and Agricultural Code is amended to read:

31753. Any rabbit, guinea pig, hamster, pot-bellied pig, bird, lizard, snake, turtle, or tortoise *that is* legally allowed as personal property *and that is* impounded in a public or private shelter shall be held for the same period of time, under the same requirements of care, and with the same opportunities for redemption and adoption by new owners or nonprofit, as defined in Section 501(c)(3) of the Internal Revenue Code, animal rescue or adoption organizations as *provided for* cats and dogs. Section 17006 shall also apply to these animals. In addition to any required spay or neuter deposit, the pound or shelter, at its discretion, may assess a fee, not to exceed the standard adoption fee, for animals released to nonprofit animal rescue or adoption organizations pursuant to this section.

SEC. 62. Section 3517.65 of the Government Code is amended to read:

1 3517.65. (a) Notwithstanding Section 3517.6, this
2 section shall apply only to state employees in State
3 Bargaining Unit 19.

4 (b) ~~In any case where~~ *If* the provisions of Section 70031
5 of the Education Code, or subdivision (i) of Section 3513,
6 or Section 14876, 18714, 19080.5, 19100, 19143, 19261,
7 19576.1, 19582.3, 19175.5, 19818.16, 19819.1, 19820, 19822,
8 19824, 19826, 19827, 19828, 19829, 19830, 19831, 19832,
9 19833, 19834, 19835, 19836, 19837, 19838, 19839, 19840,
10 19841, 19842, 19843, 19844, 19845, 19846, 19847, 19848,
11 19849, 19849.1, 19849.4, 19850.1, 19850.2, 19850.3, 19850.4,
12 19850.5, 19850.6, 19851, 19853, 19854, 19856, 19856.1,
13 19858.1, 19858.2, 19859, 19860, 19861, 19862, 19862.1, 19863,
14 19863.1, 19864, 19866, 19869, 19870, 19871, 19871.1, 19872,
15 19873, 19874, 19875, 19876, 19877, 19877.1, 19878, 19879,
16 19880, 19880.1, 19881, 19882, 19883, 19884, 19885, 19887,
17 19887.1, 19887.2, 19888, 19990, 19991, 19991.1, 19991.2,
18 19991.3, 19991.4, 19991.5, 19991.6, 19991.7, 19992, 19992.1,
19 19992.2, 19992.3, 19992.4, 19993, 19994.1, 19994.2, 19994.3,
20 19994.4, 19995, 19995.1, 19995.2, 19995.3, 19996.1, 19996.2,
21 19998, 19998.1, ~~20750.11, 21400, 21402, 21404, 21405~~ 20796,
22 ~~21600, 21602, 21604, 21605~~, 22825, or 22825.1 are in conflict
23 with the provisions of a memorandum of understanding,
24 the memorandum of understanding shall be controlling
25 without further legislative action.

26 (c) ~~In any case where~~ *If* the provisions of Section
27 19997.2, 19997.9, 19997.10, 19997.12, ~~or~~ 19997.14, 19997.43,
28 19997.48, 19997.51, ~~or~~ 19997.53; are in conflict with the
29 provisions of a memorandum of understanding, the terms
30 of the memorandum of understanding shall be
31 controlling unless the State Personnel Board finds those
32 terms to be inconsistent with merit employment
33 principles as provided for by Article VII of the California
34 Constitution. ~~—Where~~ *If* this finding is made, the
35 provisions of the Government Code shall prevail until
36 those affected sections of the memorandum of
37 understanding are renegotiated to resolve the
38 inconsistency. If any provision of the memorandum of
39 understanding requires the expenditure of funds, those
40 provisions of the memorandum of understanding shall

1 not become effective unless approved by the Legislature
2 in the annual Budget Act. If any provision of the
3 memorandum of understanding requires legislative
4 action to permit its implementation by amendment of
5 any section not cited ~~above~~ *in this subdivision*, those
6 provisions of the memorandum of understanding shall
7 not become effective unless approved by the Legislature.

8 SEC. 63. Section 4560 of the Government Code is
9 amended to read:

10 4560. (a) The Legislature finds and declares that
11 there is a substantial need to provide adequate child care
12 facilities for state employees.

13 (b) When the state constructs, acquires, or receives as
14 a gift any office building that can accommodate 700 or
15 more state employees, or when additions, alterations, or
16 repairs are made to any existing state-owned office
17 building that can accommodate 700 or more state
18 employees, and the additions, alterations, or repairs both
19 change and affect the use of 25 percent of the net square
20 feet area of the building and include the addition to,
21 alteration of, or repair of the first floor, adequate space
22 shall be designated within the building to meet the child
23 care needs of those employees, if a review of those
24 employees slated to occupy the new or renovated
25 building shows sufficient need for child care services for
26 30 or more children. The review shall be conducted by
27 the Department of General Services and the Child
28 Development Programs Advisory Committee
29 established pursuant to Section 8286 of the Education
30 Code.

31 (c) The Director of General Services may secure space
32 in any adequate facility for the same purposes if funds for
33 the offsite facilities are made available and the director
34 determines that any of the following conditions exist:

35 (1) All other physical requirements controlling the
36 development of the child care facilities within the office
37 building cannot be utilized.

38 (2) It is more cost-efficient for the state to provide for
39 equivalent child care facilities within a reasonable
40 distance of the place of employment.

1 (3) Locating the child care center within a reasonable
2 distance offsite would provide an enhanced facility for
3 the children or would mitigate security concerns.

4 ~~(d) It is the intent of the Legislature that existing~~
5 *Existing* state office buildings, at the discretion of the
6 Director of General Services, may be retrofitted to
7 accommodate a child care facility. State funds required
8 for the retrofitting shall be subject to regular budgetary
9 procedures and approvals.

10 (e) Space designed within a state-owned office
11 building for the child care facility shall comply with the
12 prevailing local and state safety building codes for child
13 care facilities.

14 (f) The indoor area shall not exceed 2,100 square feet,
15 nor be less than that required to accommodate 30
16 children, excluding space for restrooms, kitchen facilities,
17 storage areas, and teacher offices. Outdoor play area
18 space shall correspond with the indoor play area as set
19 ~~forth~~ *described* in Title 22 of the California Code of
20 Regulations.

21 (g) Utilization of the space shall be subject to terms
22 and conditions as set forth by the Director of General
23 Services. The terms shall include payment of rent, proof
24 of financial responsibility, and maintenance of space. The
25 space shall be made available to ~~the~~ employees who wish
26 to establish child care facilities at a rate to be established
27 by the Director of General Services based upon the actual
28 cost to the state, the average cost of state-owned space in
29 the area, or the statewide average cost of state-owned
30 space, whichever is less. If, however, the director
31 determines that a lower rent must be charged to ensure
32 the viability of a child care facility, the director may
33 charge a lower rate.

34 ~~(h) (1) The employee-occupants shall be notified in~~
35 ~~writing by the~~ *The* department or departments
36 occupying the building; *shall notify the*
37 *employee-occupants in writing* of the availability of space
38 to be used for a child care facility no earlier than 180 days
39 prior to the projected date of occupancy of a new building
40 or space provided as the result of additions, alterations, or

1 repairs to an existing state-owned building, and the
2 additions, alterations, or repairs that both change and
3 affect the use of 25 percent of the net square feet area of
4 the building and include the addition to, alteration of, or
5 repair of the first floor. If, within 30 days after full
6 occupancy of a new office building or 30 days after the
7 completion of additions, alterations, or repairs to an
8 existing state-owned office building, the
9 employee-occupants so desiring have not filed an
10 application with the Secretary of State as a nonprofit
11 corporation for the purpose of organizing a child care
12 center, deposited two months' rent in a commercial or
13 savings account, and entered into a contract with the
14 Department of General Services, the space may be used
15 for any other purpose, as long as no permanent alteration
16 of the space occurs. Other purposes may include, but are
17 not limited to, conference rooms, storage areas, or offices.
18 The space for child care shall be held for the
19 employee-occupants' nonprofit corporation only as long
20 as they pay the monthly rent and meet the terms set forth
21 in the contract. Payment of rent shall commence 30 days
22 after full occupancy of a new office building or 30 days
23 after completion of additions, alterations, or repairs, as
24 specified in this section.

25 (2) If, at a later date, the employee-occupants so
26 desiring (A) file an application with the Secretary of State
27 as a nonprofit corporation for the purpose of organizing
28 a child care facility, (B) deposit two ~~month's~~ *months'* rent
29 in a commercial or savings account, and (C) notify the
30 Director of General Services of those actions, then the
31 space shall be reconverted for child care purposes within
32 180 days of the notice.

33 (i) Children ~~of whom~~ *from families in which* at least
34 one parent or guardian is a state employee shall be given
35 priority admission; over other children; to the child care
36 facility.

37 (j) When a child care center within a state-owned
38 office building has been operative for five years, the
39 Director of General Services shall assess the child care
40 needs of the state employees using the center and the

1 office space needs of the building within which the center
2 is located. If the assessment demonstrates a greater need
3 for office space than for child care, the Director of
4 General Services may close the child care center. Ninety
5 days' written notice *of the closure* shall be given to the
6 director or head teacher of the center ~~of the closure~~.

7 (k) This section does not apply to buildings that
8 provide care or 24-hour residential care for patients,
9 inmates, or wards of the state, such as state hospitals and
10 correctional facilities.

11 SEC. 64. Section 6253 of the Government Code is
12 amended to read:

13 6253. (a) Public records are open to inspection at all
14 times during the office hours of the state or local agency
15 and every person has a right to inspect any public record,
16 except as hereafter provided. Any reasonably segregable
17 portion of a record shall be available for inspection by any
18 person requesting the record after deletion of the
19 portions that are exempted by law.

20 (b) Except with respect to public records exempt
21 from disclosure by express provisions of law, each state or
22 local agency, upon a request for a copy of records that
23 reasonably describes an identifiable record or records,
24 shall make the records promptly available to any person;
25 upon payment of fees covering direct costs of duplication,
26 or a statutory fee, if applicable. Upon request, an exact
27 copy shall be provided unless impracticable to do so.
28 Computer data shall be provided in a form determined
29 by the agency.

30 (c) Each agency, upon a request for a copy of records,
31 shall, within 10 days from receipt of the request,
32 determine whether the request, in whole or in part, seeks
33 copies of disclosable public records in the possession of
34 the agency and shall promptly notify the person making
35 the request of the determination and the reasons
36 therefor. In unusual circumstances, the time limit
37 prescribed in this section may be extended by written
38 notice by the head of the agency or his or her designee to
39 the person making the request, setting forth the reasons
40 for the extension and the date on which a determination

1 is expected to be dispatched. No notice shall specify a date
2 that would result in an extension for more than 14 days.
3 As used in this section, “unusual circumstances” means
4 *the following*, but only to the extent reasonably necessary
5 to the proper processing of the particular request:

6 (1) The need to search for and collect the requested
7 records from field facilities or other establishments that
8 are separate from the office processing the request.

9 (2) The need to search for, collect, and appropriately
10 examine a voluminous amount of separate and distinct
11 records ~~which~~ *that* are demanded in a single request.

12 (3) The need for consultation, which shall be
13 conducted with all practicable speed, with another
14 agency having substantial interest in the determination
15 of the request or among two or more components of the
16 agency having substantial subject matter interest therein.

17 (d) Nothing in this chapter shall be construed to
18 permit an agency to obstruct the inspection or copying of
19 public records. Any notification of denial of any request
20 for records shall set forth the names and titles or positions
21 of each person responsible for the denial.

22 (e) Except as otherwise prohibited by law, a state or
23 local agency may adopt requirements for itself that allow
24 for faster, more efficient, or greater access to records than
25 prescribed by the minimum standards set forth in this
26 chapter.

27 SEC. 65. Section 6505.5 of the Government Code is
28 amended to read:

29 6505.5. If a separate agency or entity is created by the
30 agreement, the agreement shall designate the treasurer
31 of one of the contracting parties, or in lieu thereof, the
32 county treasurer of a county in which one of the
33 contracting parties is situated, or a certified public
34 accountant to be the depository and have custody of all
35 the money of the agency or entity, from whatever source.

36 The treasurer or certified public accountant so
37 designated shall *do all of the following*:

38 (a) Receive and receipt for all money of the agency or
39 entity and place it in the treasury of the treasurer so
40 designated to the credit of the agency or entity;

1 (b) Be responsible, upon his *or her* official bond, for
2 the safekeeping and disbursement of all agency or entity
3 money so held by him; *or her*.

4 (c) Pay, when due, out of money of the agency or
5 entity ~~so~~ held by him *or her*, all sums payable on
6 outstanding bonds and coupons of the agency or entity;.

7 (d) Pay any other sums due from the agency or entity
8 from agency or entity money, or any portion thereof, only
9 upon warrants of the public officer performing the
10 functions of auditor or controller who has been
11 designated by the agreement; ~~and~~.

12 (e) Verify and report in writing on the first day of July,
13 October, January, and April of each year to the agency or
14 entity and to the contracting parties to the agreement the
15 amount of money he *or she* holds for the agency or entity,
16 the amount of receipts since his *or her* last report, and the
17 amount paid out since his *or her* last report.

18 The officer performing the functions of auditor or
19 controller shall be of the same public agency as the
20 treasurer designated *as* depository pursuant to this
21 section. However, where a certified public accountant
22 has been designated as treasurer of the entity, the auditor
23 of one of the contracting parties or of a county in which
24 one of the contracting parties is located shall be
25 designated as auditor of the entity. The auditor shall draw
26 warrants to pay demands against the agency or entity
27 when the demands have been approved by any person
28 authorized to so approve in the agreement creating the
29 agency or entity.

30 The governing body of the same public entity as the
31 treasurer and auditor specified pursuant to this section
32 shall determine charges to be made against the agency or
33 entity for the services of the treasurer and auditor.
34 However, where a certified public accountant has been
35 designated as treasurer, the governing body of the same
36 public entity as the auditor specified pursuant to this
37 section shall determine charges to be made against the
38 agency or entity for the services of the auditor.

39 SEC. 66. Section 7073 of the Government Code is
40 amended to read:

1 7073. (a) Except as provided in subdivision (e), any
2 city, county, or city and county with an eligible area
3 within its jurisdiction may complete a preliminary
4 application for designation as an enterprise zone. The
5 applying entity shall establish definitive boundaries for
6 the proposed enterprise zone and the targeted
7 employment area.

8 (b) (1) In designating enterprise zones, the agency
9 shall select from the applications submitted those
10 proposed enterprise zones that, upon a comparison of all
11 of the applications submitted, indicate that they propose
12 the most effective, innovative, and comprehensive
13 regulatory, tax, program, and other incentives in
14 attracting private sector investment in the zone
15 proposed.

16 (2) For purposes of this subdivision, regulatory
17 incentives include, but are not limited to, all of the
18 following:

19 (A) The suspension or relaxation of locally originated
20 or modified building codes, zoning laws, general
21 development plans, or rent controls.

22 (B) The elimination or reduction of fees for
23 applications, permits, and local government services.

24 (C) The establishment of a streamlined permit
25 process.

26 (3) For purposes of this subdivision, tax incentives
27 include, but are not limited to, the elimination or
28 reduction of construction taxes or business license taxes.

29 (4) For the purposes of this subdivision, program and
30 other incentives may include, but are not limited to, all
31 of the following:

32 (A) The provision or expansion of infrastructure.

33 (B) The targeting of federal block grant moneys,
34 including small cities, education, and health and welfare
35 block grants.

36 (C) The targeting of economic development grants
37 and loan moneys, including grant and loan moneys
38 provided by the federal Urban Development Action
39 Grant program and the federal Economic Development
40 Administration.

(D) The targeting of state and federal job disadvantaged and vocational education grant moneys, including moneys provided by the federal Job Training Partnership Act of 1982 (P.L. 97-300).

(E) The targeting of federal or state transportation grant moneys.

(F) The targeting of federal or state low-income housing and rental assistance moneys.

(G) The use of tax allocation bonds, special assessment bonds, bonds under the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 *2 of Title 5*), industrial development bonds, revenue bonds, private activity bonds, housing bonds, bonds issued pursuant to the Marks-Ross Local Bond Pooling Act of 1985 ~~Article~~ *Article* 4 (commencing with Section 6584) of Chapter 5), certificates of participation, hospital bonds, redevelopment bonds, ~~and~~ school bonds, and ~~including~~ all special provisions provided for under federal tax law for enterprise community or empowerment zone bonds.

(5) In the process of designating new enterprise zones, the agency shall take into consideration the location of existing zones and make every effort to locate new zones in a manner that will not adversely affect any existing zones.

(6) In designating new enterprise zones, the agency shall include in its criteria the fact that jurisdictions have been declared disaster areas by the President of the United States within the last seven years.

(c) In evaluating applications for designation, the agency shall ensure that applications are not disqualified solely because of technical deficiencies, and shall provide applicants with an opportunity to correct the deficiencies. Applications shall be disqualified if the deficiencies are not corrected within two weeks.

(d) (1) Except as provided in paragraph (2), or upon dedesignation pursuant to subdivision (c) of Section 7076.1 or Section 7076.2, a designation made by the agency shall be binding for a period of 15 years from the date of the original designation.

(2) The designation period for any zone designated pursuant to either Section 7073 or 7085 prior to 1990 may total 20 years, subject to possible dedesignation pursuant to subdivision (c) of Section 7076.1 or Section 7076.2, if *the following requirements are met*:

(A) The zone receives a superior or passing audit pursuant to subdivision (c) of Section 7076.1.

(B) The local jurisdictions comprising the zone submit an updated economic development plan to the agency justifying the need for an additional five years by defining goals and objectives that still need to be achieved and indicating what actions are to be taken to achieve these goals and objectives.

(e) (1) Notwithstanding any other provision of law, any area designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070) as it read prior to January 1, 1997, or as a targeted economic development area, neighborhood economic development area, or program area pursuant to Chapter 12.9 (commencing with Section 7080) as it read prior to January 1, 1997, or any program area or part of a program area deemed designated as an enterprise zone pursuant to Section 7085.5 as it read prior to January 1, 1997, shall be deemed to be designated as an enterprise zone pursuant to this chapter. The effective date of designation of the enterprise zone shall be that of the original designation of the enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070) as it read prior to January 1, 1997, or of the program area pursuant to Chapter 12.9 (commencing with Section 7080) as it read prior to January 1, 1997, and in no event shall the total designation period exceed 15 years, except as provided in paragraph (2) of subdivision (d).

(2) Notwithstanding any other provision of law, any enterprise zone authorized, but not designated, pursuant to Chapter 12.8 (commencing with Section 7070) as it read prior to January 1, 1997, shall be allowed to complete the application process started pursuant to that chapter, and to receive final designation as an enterprise zone pursuant to this chapter.

1 (3) Notwithstanding any other provision of law, any
2 expansion of a designated enterprise zone or program
3 area authorized pursuant to Chapter 12.8 (commencing
4 with Section 7070) as it read prior to January 1, 1997, or
5 Chapter 12.9 (commencing with Section 7080) as it read
6 prior to January 1, 1997, shall be deemed to be authorized
7 as an expansion for a designated enterprise zone pursuant
8 to this chapter.

9 (4) ~~No part of this~~ *This* chapter shall *not* be construed
10 to require a new application for designation by an
11 enterprise zone designated pursuant to Chapter 12.8
12 (commencing with Section 7070) as it read prior to
13 January 1, 1997, or a targeted economic development
14 area, neighborhood economic development area, or
15 program area designated pursuant to Chapter 12.9
16 (commencing with Section 7080) as it read prior to
17 January 1, 1997.

18 (f) No more than 39 enterprise zones shall be
19 designated at any one time pursuant to this chapter,
20 including those deemed designated pursuant to
21 subdivision (e). Upon the expiration or termination of a
22 designation, the agency is authorized to designate
23 another enterprise zone to maintain a total of 39
24 enterprise zones.

25 SEC. 67. Section 7260 of the Government Code is
26 amended to read:

27 7260. As used in this chapter:

28 (a) “Public entity” includes the state, the Regents of
29 the University of California, a county, city, city and
30 county, district, public authority, public agency, and any
31 other political subdivision or public corporation in the
32 state or any entity acting on behalf of these agencies when
33 acquiring real property, or any interest therein, in any
34 city or county for public use, and any person who has the
35 authority to acquire property by eminent domain under
36 state law.

37 (b) “Person” means any individual, partnership,
38 corporation, limited liability company, or association.

39 (c) (1) “Displaced person” means both of the
40 following:



(A) Any person who moves from real property, or who moves his or her personal property from real property, either:

(i) As a direct result of a written notice of intent to acquire, or the acquisition of, the real property, in whole or in part, for a program or project undertaken by a public entity or by any person having an agreement with, or acting on behalf of, a public entity.

(ii) As a direct result of the rehabilitation, demolition, or other displacing activity, as the public entity may prescribe under a program or project undertaken by a public entity, of real property on which the person is a residential tenant or conducts a business or farm operation, ~~in any case in which~~ *if* the public entity determines that the displacement is permanent. For purposes of this subparagraph, “residential tenant” includes any occupant of a residential hotel unit, as defined in subdivision (b) of Section 50669 of the Health and Safety Code, and any occupant of employee housing, as defined in Section 17008 of the Health and Safety Code, but does not include any person who has been determined to be in unlawful occupancy of the displacement dwelling.

(B) Solely for the purposes of Sections 7261 and 7262, any person who moves from real property, or moves his or her personal property from real property, either:

(i) As a direct result of a written notice of intent to acquire, or the acquisition of, other real property, in whole or in part, on which the person conducts a business or farm operation; for a program or project undertaken by a public entity.

(ii) As a direct result of the rehabilitation, demolition, or other displacing activity as the public entity may prescribe under a program or project undertaken by a public entity, of other real property on which the person conducts a business or farm operation, in any case in which the public entity determines that the displacement is permanent.

~~(2) The definition contained in this~~ *This* subdivision shall be construed so that persons displaced as a result of

1 public action receive relocation benefits in cases where
2 they are displaced as a result of an owner participation
3 agreement or an acquisition carried out by a private
4 person for, or in connection with, a public use where the
5 public entity is otherwise empowered to acquire the
6 property to carry out the public use. ~~Except~~

7 *Except for* persons or families of low and moderate
8 income, as defined in Section 50093 of the Health and
9 Safety Code, who are occupants of housing that was made
10 available to them on a permanent basis by a public agency
11 and who are required to move from the housing, a
12 “displaced person” shall not include any of the following:

13 (A) Any person who has been determined to be in
14 unlawful occupancy of the displacement dwellings.

15 (B) Any person whose right of possession at the time
16 of moving arose after the date of the public entity’s
17 acquisition of the real property.

18 (C) Any person who has occupied the real property for
19 the purpose of obtaining assistance under this chapter.

20 (D) In any case in which the public entity acquires
21 property for a program or project (other than a person
22 who was an occupant of the property at the time it was
23 acquired), any person who occupies the property for a
24 period subject to termination when the property is
25 needed for the program or project.

26 (d) “Business” means any lawful activity, except a
27 farm operation, conducted for any of the following:

28 (1) Primarily for the purchase, sale, lease, or rental of
29 personal and real property, and for the manufacture,
30 processing, or marketing of products, commodities, or
31 any other personal property.

32 (2) Primarily for the sale of services to the public.

33 (3) Primarily by a nonprofit organization.

34 (4) Solely for the purpose of Section 7262 for assisting
35 in the purchase, sale, resale, manufacture, processing, or
36 marketing of products, commodities, personal property,
37 or services by the erection and maintenance of an
38 outdoor advertising display, whether or not the display is
39 located on the premises on which any of the above
40 activities are conducted.

1 (e) “Farm operation” means any activity conducted
2 solely or primarily for the production of one or more
3 agricultural products or commodities, including timber,
4 for sale or home use, and customarily producing these
5 products or commodities in sufficient quantity to be
6 capable of contributing materially to the operator’s
7 support.

8 (f) “Affected property” means any real property that
9 actually declines in fair market value because of
10 acquisition by a public entity for public use of other real
11 property and a change in the use of the real property
12 acquired by the public entity.

13 (g) “Public use” means a use for which real property
14 may be acquired by eminent domain.

15 (h) “Mortgage” means classes of liens that are
16 commonly given to secure advances on, or the unpaid
17 purchase price of, real property, together with the credit
18 instruments, if any, secured thereby.

19 (i) “Comparable replacement dwelling” means any
20 dwelling that is all of the following:

21 (1) Decent, safe, and sanitary.

22 (2) Adequate in size to accommodate the occupants.

23 (3) In the case of a displaced person who is a renter,
24 within the financial means of the displaced person. A
25 comparable replacement dwelling is within the financial
26 means of a displaced person if the monthly rental cost of
27 the dwelling, including estimated average monthly utility
28 costs, minus any replacement housing payment available
29 to the person, does not exceed 30 percent of the person’s
30 average monthly income, unless the displaced person
31 meets one or more of the following conditions, in which
32 case the payment of the monthly rental cost of the
33 comparable replacement dwelling, including estimated
34 average monthly utility costs, minus any replacement
35 housing payment available to the person, shall not exceed
36 25 percent of the person’s average monthly income:

37 (A) Prior to January 1, 1998, the displaced person
38 received a notice to vacate from a public entity, or from
39 a person having an agreement with a public entity.

1 (B) The displaced person resides on property that was
2 acquired by a public entity, or by a person having an
3 agreement with a public entity, prior to January 1, 1998.

4 (C) Prior to January 1, 1998, a public entity, or a person
5 having an agreement with a public entity, initiated
6 negotiations to acquire the property on which the
7 displaced person resides.

8 (D) Prior to January 1, 1998, a public entity, or a person
9 having an agreement with a public entity, entered into an
10 agreement to acquire the property on which the
11 displaced person resides.

12 (E) Prior to January 1, 1998, a public entity, or a person
13 having an agreement with a public entity, gave written
14 notice of intent to acquire the property on which the
15 displaced person resides.

16 (F) The displaced person is covered by, or resides in
17 an area or project covered by, a final relocation plan that
18 was adopted by the legislative body prior to January 1,
19 1998, pursuant to this chapter and the regulations
20 ~~promulgated thereunder~~ *adopted pursuant to this*
21 *chapter.*

22 (G) The displaced person is covered by, or resides in
23 an area or project covered by, a proposed relocation plan
24 that was required to have been submitted prior to
25 January 1, 1998, to the Department of Housing and
26 Community Development or to a local relocation
27 committee, or for which notice was required to have been
28 provided to occupants of the property prior to January 1,
29 1998, pursuant to this chapter and the regulations
30 ~~promulgated thereunder~~ *adopted pursuant to this*
31 *chapter.*

32 (H) The displaced person is covered by, or resides in
33 an area or project covered by, a proposed relocation plan
34 that was submitted prior to January 1, 1998, to the
35 Department of Housing and Community Development
36 or to a local relocation committee, or for which notice was
37 provided to the public or to occupants of the property
38 prior to January 1, 1998, pursuant to this chapter and the
39 regulations adopted pursuant to this chapter, and the

1 person is eventually displaced by the project covered in
2 the proposed relocation plan.

3 (I) The displaced person resides on property for which
4 a contract for acquisition, rehabilitation, demolition,
5 construction, or other displacing activity was entered into
6 by a public entity, or by a person having an agreement
7 with a public entity, prior to January 1998.

8 (J) The displaced person resides on property where an
9 owner participation agreement, or other agreement
10 between a public entity and a private party that will
11 result in the acquisition, rehabilitation, demolition, or
12 development of the property or other displacement, was
13 entered into prior to January 1, 1998, and the displaced
14 person resides in the property at the time of the
15 agreement, provides information to the public entity, or
16 person having an agreement with the public entity
17 showing that he or she did reside in the property at the
18 time of the agreement and is eventually displaced by the
19 project covered in the agreement.

20 (4) Comparable with respect to the number of rooms,
21 habitable space, and type and quality of construction.
22 Comparability under this paragraph shall not require
23 strict adherence to a detailed, feature-by-feature
24 comparison. While a comparable replacement dwelling
25 need not possess every feature of the displacement
26 dwelling, the principal features shall be present.

27 (5) In an area not subject to unreasonable adverse
28 environmental conditions.

29 (6) In a location generally not less desirable than the
30 location of the displaced person's dwelling with respect
31 to public utilities, facilities, services, and the displaced
32 person's place of employment.

33 (j) "Displacing agency" means any public entity or
34 person carrying out a program or project which causes a
35 person to be a displaced person for a public project.

36 (k) "Appraisal" means a written statement
37 independently and impartially prepared by a qualified
38 appraiser setting forth an opinion of defined value of an
39 adequately described property as of a specific date,

1 supported by the presentation and analysis of relevant
2 market information.

3 (l) “Small business” means a business as defined in
4 Part 24 of Title 49 of the Code of Federal Regulations.

5 (m) “Lead agency” means the Department of
6 Housing and Community Development.

7 SEC. 68. Section 7262.5 of the Government Code is
8 amended to read:

9 7262.5. Notwithstanding Section 7265.3 or any other
10 provision of law, tenants residing in any rental project
11 who are displaced from the project for a period of one
12 year or less as part of a rehabilitation of that project, that
13 is funded in whole or in part by a public entity, shall not
14 be eligible for permanent housing assistance benefits
15 pursuant to ~~Section~~ Sections 7264 and 7264.5 ~~of this~~
16 ~~chapter~~ if all of the following criteria are satisfied:

17 (a) The project is a “qualified affordable housing
18 preservation project,” which means any complex of two
19 or more units whose owners enter into a recorded
20 regulatory agreement, having a term for the useful life of
21 the project, with any entity for the provision of project
22 rehabilitation financing. For this purpose, the regulatory
23 agreement shall require of the owner and all successors
24 and assigns of the owner, as long as the regulatory
25 agreement is in effect, that at least 49 percent of the
26 tenants in the project ~~shall~~ have, at the time of the
27 recordation of the regulatory agreement, incomes not in
28 excess of 60 percent of the area median income, adjusted
29 by household size, as determined by the appropriate
30 agency of the state. In addition, a project is a qualified
31 affordable housing preservation project only if the
32 beneficiary of the regulatory agreement elects this
33 designation by so indicating on the regulatory
34 agreement.

35 (b) The resident is offered the right to return to his or
36 her original unit, or a comparable unit in the same
37 complex if his or her original unit is not otherwise
38 available due to the rehabilitation, with rent for the first
39 12 months subsequent to that return being the lower of
40 the following: up to 5 percent higher than the rent at the

1 time of displacement; or up to 30 percent of household
2 income.

3 (c) The estimated time of displacement is reasonable,
4 and the temporary unit is not unreasonably impacted by
5 the effects of the construction, taking into consideration
6 the ages and physical conditions of the members of the
7 displaced household.

8 (d) All other financial benefits and services otherwise
9 required under this chapter are provided to the residents
10 temporarily displaced from their units, including
11 relocation to a comparable replacement unit. Residents
12 shall be temporarily relocated to a unit within the same
13 complex, or to a unit located reasonably near the complex
14 if that unit is in a location generally not less desirable than
15 the location of the displaced person's dwelling with
16 respect to public utilities, services, and the displaced
17 person's place of employment.

18 SEC. 69. Section 9359.01 of the Government Code is
19 amended to read:

20 9359.01. (a) Notwithstanding any other provision of
21 this part, the benefits payable to any person who *becomes*
22 *a member* for the first time ~~becomes a member~~ on or after
23 January 1, 1990, shall be ~~subject~~ *subject* to the limitations
24 set forth in Section 415 of the Internal Revenue Code.

25 (b) Notwithstanding any other law, the benefits
26 payable to any person who became a member prior to
27 January 1, 1990, shall be subject to the greater of the
28 following limitations as provided in Section 415(b)(10) of
29 the Internal Revenue Code:

30 (1) The limitations set forth in Section 415 of the
31 Internal Revenue Code.

32 (2) The accrued benefit of a member under this
33 system (determined without regard to any amendment
34 to the system made after October 14, 1987).

35 SEC. 70. Section 12652 of the Government Code is
36 amended to read:

37 12652. (a) (1) The Attorney General shall diligently
38 investigate violations under Section 12651 involving state
39 funds. If the Attorney General finds that a person has
40 violated or is violating Section 12651, the Attorney

1 General may bring a civil action under this section against
2 that person.

3 (2) If the Attorney General brings a civil action under
4 this subdivision on a claim involving political subdivision
5 funds as well as state funds, the Attorney General shall, on
6 the same date that the complaint is filed in this action,
7 serve by mail with “return receipt ~~request~~” *requested*”
8 a copy of the complaint on the appropriate prosecuting
9 authority.

10 (3) The prosecuting authority shall have the right to
11 intervene in an action brought by the Attorney General
12 under this subdivision within 60 days after receipt of the
13 complaint pursuant to paragraph (2). The court may
14 permit intervention thereafter upon a showing that all of
15 the requirements of Section 387 of the Code of Civil
16 Procedure have been met.

17 (b) (1) The prosecuting authority of a political
18 subdivision shall diligently investigate violations under
19 Section 12651 involving political subdivision funds. If the
20 prosecuting authority finds that a person has violated or
21 is violating Section 12651, the prosecuting authority may
22 bring a civil action under this section against that person.

23 (2) If the prosecuting authority brings a civil action
24 under this section on a claim involving state funds as well
25 as political subdivision funds, the prosecuting authority
26 shall, on the same date that the complaint is filed in this
27 action, serve a copy of the complaint on the Attorney
28 General.

29 (3) Within 60 days after receiving the complaint
30 pursuant to paragraph (2), the Attorney General shall do
31 either of the following:

32 (A) Notify the court that it intends to proceed with the
33 action, in which case the Attorney General shall assume
34 primary responsibility for conducting the action and the
35 prosecuting authority shall have the right to continue as
36 a party.

37 (B) Notify the court that it declines to proceed with
38 the action, in which case the prosecuting authority shall
39 have the right to conduct the action.

1 (c) (1) A person may bring a civil action for a
2 violation of this article for the person and either for the
3 State of California in the name of the state, if any state
4 funds are involved, or for a political subdivision in the
5 name of the political subdivision, if political subdivision
6 funds are exclusively involved. The person bringing the
7 action shall be referred to as the qui tam plaintiff. Once
8 filed, the action may be dismissed only with the written
9 consent of the court, taking into account the best interests
10 of the parties involved and the public purposes behind
11 this act.

12 (2) A complaint filed by a private person under this
13 subdivision shall be filed in superior court in camera and
14 may remain under seal for up to 60 days. No service shall
15 be made on the defendant until after the complaint is
16 unsealed.

17 (3) On the same day as the complaint is filed pursuant
18 to paragraph (2), the qui tam plaintiff shall serve by mail
19 with “return receipt requested” the Attorney General
20 with a copy of the complaint and a written disclosure of
21 substantially all material evidence and information the
22 person possesses.

23 (4) Within 60 days after receiving a complaint and
24 written disclosure of material evidence and information
25 alleging violations that involve state funds but not
26 political subdivision funds, the Attorney General may
27 elect to intervene and proceed with the action.

28 (5) The Attorney General may, for good cause shown,
29 move the court for extensions of the time during which
30 the complaint remains under seal pursuant to paragraph
31 (2). The motion may be supported by affidavits or other
32 submissions in camera.

33 (6) Before the expiration of the 60-day period or any
34 extensions obtained under paragraph (5), the Attorney
35 General shall do either of the following:

36 (A) Notify the court that it intends to proceed with the
37 action, in which case the action shall be conducted by the
38 Attorney General and the seal shall be lifted.

1 (B) Notify the court that it declines to proceed with
2 the action, in which case the seal shall be lifted and the qui
3 tam plaintiff shall have the right to conduct the action.

4 (7) (A) Within 15 days after receiving a complaint
5 alleging violations that exclusively involve political
6 subdivision funds, the Attorney General shall forward
7 copies of the complaint and written disclosure of material
8 evidence and information to the appropriate prosecuting
9 authority for disposition, and shall notify the qui tam
10 plaintiff of the transfer.

11 (B) Within 45 days after the Attorney General
12 forwards the complaint and written disclosure pursuant
13 to subparagraph (A), the prosecuting authority may elect
14 to intervene and proceed with the action.

15 (C) The prosecuting authority may, for good cause
16 shown, move for extensions of the time during which the
17 complaint remains under seal. The motion may be
18 supported by affidavits or other submissions in camera.

19 (D) Before the expiration of the 45-day period or any
20 extensions obtained under subparagraph (C), the
21 prosecuting authority shall do either of the following:

22 (i) Notify the court that it intends to proceed with the
23 action, in which case the action shall be conducted by the
24 prosecuting authority and the seal shall be lifted.

25 (ii) Notify the court that it declines to proceed with
26 the action, in which case the seal shall be lifted and the qui
27 tam plaintiff shall have the right to conduct the action.

28 (8) (A) Within 15 days after receiving a complaint
29 alleging violations that involve both state and political
30 subdivision funds, the Attorney General shall forward
31 copies of the complaint and written disclosure to the
32 appropriate prosecuting authority, and shall coordinate
33 its review and investigation with those of the prosecuting
34 authority.

35 (B) Within 60 days after receiving a complaint and
36 written disclosure of material evidence and information
37 alleging violations that involve both state and political
38 subdivision funds, the Attorney General or the
39 prosecuting authority, or both, may elect to intervene
40 and proceed with the action.

1 (C) The Attorney General or the prosecuting
2 authority, or both, may, for good cause shown, move the
3 court for extensions of the time during which the
4 complaint remains under seal under paragraph (2). The
5 motion may be supported by affidavits or other
6 submissions in camera.

7 (D) Before the expiration of the 60-day period or any
8 extensions obtained under subparagraph (C), the
9 Attorney General shall do ~~either~~ *one* of the following:

10 (i) Notify the court that it intends to proceed with the
11 action, in which case the action shall be conducted by the
12 Attorney General and the seal shall be lifted.

13 (ii) Notify the court that it declines to proceed with
14 the action but that the prosecuting authority of the
15 political subdivision involved intends to proceed with the
16 action, in which case the seal shall be lifted and the action
17 shall be conducted by the prosecuting authority.

18 (iii) Notify the court that both it and the prosecuting
19 authority decline to proceed with the action, in which
20 case the seal shall be lifted and the qui tam plaintiff shall
21 have the right to conduct the action.

22 (E) If the Attorney General proceeds with the action
23 pursuant to clause (i) of subparagraph (D), the
24 prosecuting authority of the political subdivision shall be
25 permitted to intervene in the action within 60 days after
26 the Attorney General notifies the court of its intentions.
27 The court may authorize intervention thereafter upon a
28 showing that all the requirements of Section 387 of the
29 Code of Civil Procedure have been met.

30 (9) The defendant shall not be required to respond to
31 any complaint filed under this section until 30 days after
32 the complaint is unsealed and served upon the defendant
33 pursuant to Section 583.210 of the Code of Civil
34 Procedure.

35 (10) When a person brings an action under this
36 subdivision, no other person may bring a related action
37 based on the facts underlying the pending action.

38 (d) (1) No court shall have jurisdiction over an action
39 brought under subdivision (c) against a ~~member~~
40 *Member* of the State Senate or Assembly, a member of

1 the state judiciary, an elected official in the executive
2 branch of the state, or a member of the governing body
3 of any political subdivision if the action is based on
4 evidence or information known to the state or political
5 subdivision when the action was brought.

6 (2) ~~In no event may a~~ A person *may not* bring an action
7 under subdivision (c) that is based upon allegations or
8 transactions that are the subject of a civil suit or an
9 administrative civil money penalty proceeding in which
10 the state or political subdivision is already a party.

11 (3) (A) No court shall have jurisdiction over an action
12 under this article based upon the public disclosure of
13 allegations or transactions in a criminal, civil, or
14 administrative hearing, in an investigation, report,
15 hearing, or audit conducted by or at the request of the
16 Senate, Assembly, auditor, or governing body of a
17 political subdivision, or ~~from~~ by the news media, unless
18 the action is brought by the Attorney General or the
19 prosecuting authority of a political subdivision, or the
20 person bringing the action is an original source of the
21 information.

22 (B) For purposes of subparagraph (A), “original
23 source” means an individual who has direct and
24 independent knowledge of the information on which the
25 allegations are based, who voluntarily provided the
26 information to the state or political subdivision before
27 filing an action based on that information, and whose
28 information provided the basis or catalyst for the
29 investigation, hearing, audit, or report that led to the
30 public disclosure as described in subparagraph (A).

31 (4) No court shall have jurisdiction over an action
32 brought under ~~subsection~~ *subdivision* (c) based upon
33 information discovered by a present or former employee
34 of the state or a political subdivision during the course of
35 his or her employment; unless that employee first, in good
36 faith, exhausted existing internal procedures for
37 reporting and seeking recovery of the falsely claimed
38 sums through official channels and unless the state or
39 political subdivision failed to act on the information
40 provided within a reasonable period of time.

(e) (1) If the state or political subdivision proceeds with the action, it shall have the primary responsibility for prosecuting the action. The qui tam plaintiff shall have the right to continue as a full party to the action.

(2) (A) The state or political subdivision may seek to dismiss the action for good cause notwithstanding the objections of the qui tam plaintiff if the qui tam plaintiff has been notified by the state or political subdivision of the filing of the motion and the court has provided the qui tam plaintiff with an opportunity to oppose the motion and present evidence at a hearing.

(B) The state or political subdivision may settle the action with the defendant notwithstanding the objections of the qui tam plaintiff if the court determines, after a hearing providing the qui tam plaintiff an opportunity to present evidence, that the proposed settlement is fair, adequate, and reasonable under all of the circumstances.

(f) (1) If the state or political subdivision elects not to proceed, the qui tam plaintiff shall have the same right to conduct the action as the Attorney General or prosecuting authority would have had if it had chosen to proceed under subdivision (c). If the state or political subdivision so requests, and at its expense, the state or political subdivision shall be served with copies of all pleadings filed in the action and supplied with copies of all deposition transcripts.

(2) (A) Upon timely application, the court shall permit the state or political subdivision to intervene in an action with which it had initially declined to proceed if the interest of the state or political subdivision in recovery of the property or funds involved is not being adequately represented by the qui tam plaintiff.

(B) If the state or political subdivision is allowed to intervene under paragraph (A), the qui tam plaintiff shall retain principal responsibility for the action and the recovery of the parties shall be determined as if the state or political subdivision had elected not to proceed.

(g) (1) (A) If the Attorney General initiates an action pursuant to subdivision (a) or assumes control of an action initiated by a prosecuting authority pursuant to

1 subparagraph (A) of paragraph (3) of subdivision (b),
2 the office of the Attorney General shall receive a fixed 33
3 percent of the proceeds of the action or settlement of the
4 claim, which shall be used to support its ongoing
5 investigation and prosecution of false claims.

6 (B) If a prosecuting authority initiates and conducts an
7 action pursuant to subdivision (b), the office of the
8 prosecuting authority shall receive a fixed 33 percent of
9 the proceeds of the action or settlement of the claim,
10 which shall be used to support its ongoing investigation
11 and prosecution of false claims.

12 (C) If a prosecuting authority intervenes in an action
13 initiated by the Attorney General pursuant to paragraph
14 (3) of subdivision (a) or remains a party to an action
15 assumed by the Attorney General pursuant to
16 subparagraph (A) of paragraph (3) of subdivision (b),
17 the court may award the office of the prosecuting
18 authority a portion of the Attorney General's fixed 33
19 percent of the recovery under subparagraph (A), taking
20 into account the prosecuting authority's role in
21 investigating and conducting the action.

22 (2) If the state or political subdivision proceeds with an
23 action brought by a qui tam plaintiff under subdivision
24 (c), the qui tam plaintiff shall, subject to paragraphs (4)
25 and (5), receive at least 15 percent but not more than 33
26 percent of the proceeds of the action or settlement of the
27 claim, depending upon the extent to which the qui tam
28 plaintiff substantially contributed to the prosecution of
29 the action. When it conducts the action, the Attorney
30 General's office or the office of the prosecuting authority
31 of the political subdivision shall receive a fixed 33 percent
32 of the proceeds of the action or settlement of the claim,
33 which shall be used to support its ongoing investigation
34 and prosecution of false claims made against the state or
35 political subdivision. When both the Attorney General
36 and a prosecuting authority are involved in a qui tam
37 action pursuant to subparagraph (C) of paragraph (6) of
38 subdivision (c), the court at its discretion may award the
39 prosecuting authority a portion of the Attorney General's
40 fixed 33 percent of the recovery, taking into account the

1 prosecuting authority's contribution to investigating and
2 conducting the action.

3 (3) If the state or political subdivision does not proceed
4 with an action under subdivision (c), the qui tam plaintiff
5 shall, subject to paragraphs (4) and (5), receive an
6 amount that the court decides is reasonable for collecting
7 the civil penalty and damages on behalf of the
8 government. The amount shall be not less than 25 percent
9 and not more than 50 percent of the proceeds of the
10 action or settlement and shall be paid out of these
11 proceeds.

12 (4) ~~Where~~ *If* the action is one provided for under
13 paragraph (4) of subdivision (d), the present or former
14 employee of the state or political subdivision ~~shall not be~~
15 *is not* entitled to any minimum guaranteed recovery from
16 the proceeds. The court, however, may award the qui tam
17 plaintiff those sums from the proceeds as it considers
18 appropriate, but in no case more than 33 percent of the
19 proceeds if the state or political subdivision goes forth
20 with the action or 50 percent if the state or political
21 subdivision declines to go forth, taking into account the
22 significance of the information, the role of the qui tam
23 plaintiff in advancing the case to litigation, and the scope
24 of, and response to, the employee's attempts to report and
25 gain recovery of the falsely claimed funds through official
26 channels.

27 (5) ~~Where~~ *If* the action is one that the court finds to be
28 based primarily on information from a present or former
29 employee who actively participated in the fraudulent
30 activity, the employee ~~shall not be~~ *is not* entitled to any
31 minimum guaranteed recovery from the proceeds. The
32 court, however, may award the qui tam plaintiff any sums
33 from the proceeds that it considers appropriate, but in no
34 case more than 33 percent of the proceeds if the state or
35 political subdivision goes forth with the action or 50
36 percent if the state or political subdivision declines to go
37 forth, taking into account the significance of the
38 information, the role of the qui tam plaintiff in advancing
39 the case to litigation, the scope of the present or past
40 employee's involvement in the fraudulent activity, the

1 employee's attempts to avoid or resist the activity, and all
2 other circumstances surrounding the activity.

3 (6) The portion of the recovery not distributed
4 pursuant to paragraphs (1) to (5), inclusive, shall revert
5 to the state if the underlying false claims involved state
6 funds exclusively and to the political subdivision if the
7 underlying false claims involved political subdivision
8 funds exclusively. If the violation involved both state and
9 political subdivision funds, the court shall make an
10 apportionment between the state and political
11 subdivision based on their relative share of the funds
12 falsely claimed.

13 (7) For purposes of this section, "proceeds" include
14 civil penalties as well as double or treble damages as
15 provided in Section 12651.

16 (8) If the state, political subdivision, or the qui tam
17 plaintiff prevails in or settles any action under subdivision
18 (c), the qui tam plaintiff shall receive an amount for
19 reasonable expenses that the court finds to have been
20 necessarily incurred, plus reasonable costs and ~~attorneys'~~
21 *attorney's* fees. All expenses, costs, and fees shall be
22 awarded against the defendant and under no
23 circumstances shall they be the responsibility of the state
24 or political subdivision.

25 (9) If the state, a political subdivision, or the qui tam
26 plaintiff proceeds with the action, the court may award
27 to the defendant its reasonable ~~attorneys'~~ *attorney's* fees
28 and expenses against the party that proceeded with the
29 action if the defendant prevails in the action and the court
30 finds that the claim was clearly frivolous, clearly
31 vexatious, or brought solely for purposes of harassment.

32 (h) The court may stay an act of discovery of the
33 person initiating the action for a period of not more than
34 60 days if the Attorney General or local prosecuting
35 authority show that the act of discovery would interfere
36 with an investigation or a prosecution of a criminal or civil
37 matter arising out of the same facts, regardless of whether
38 the Attorney General or local prosecuting authority
39 proceeds with the action. This showing shall be
40 conducted in camera. The court may extend the 60-day

period upon a further showing in camera that the Attorney General or local prosecuting authority has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(i) Upon a showing by the Attorney General or local prosecuting authority that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Attorney General's or local ~~prosecuting's~~ authority *prosecuting authority's* prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, including the following:

(1) Limiting the number of witnesses the person may call.

(2) Limiting the length of the testimony of the witnesses.

(3) Limiting the person's cross-examination of witnesses.

(4) Otherwise limiting the participation by the person in the litigation.

(j) The False Claims Act Fund is hereby created in the State Treasury. Proceeds from the action or settlement of the claim by the Attorney General pursuant to this article shall be deposited into this fund. Moneys in this fund, upon appropriation by the Legislature, shall be used by the Attorney General to support the ongoing investigation and prosecution of false claims in furtherance of this article.

SEC. 71. Section 13965.2 of the Government Code is amended to read:

13965.2. Whenever an application for assistance has been approved, and the board determines that an independent evaluation pursuant to paragraph ~~(4)~~ (5) of subdivision (a) of Section 13965 is appropriate, the victim or derivative victim shall be notified of the name of the provider who is to perform the evaluation within 30 days of that determination.

1 SEC. 72. Section 14838.5 of the Government Code is
2 amended to read:

3 14838.5. (a) Notwithstanding the advertising and
4 bidding requirements of Chapter 6 (commencing with
5 Section 14825) and Section 10302 of the *Public Contract*
6 *Code*, a state agency may award a contract for the
7 acquisition of goods, services, or information technology
8 that has an estimated value of greater than two thousand
9 five hundred dollars (\$2,500), but less than fifty thousand
10 dollars (\$50,000), to a small business, as long as the agency
11 obtains price quotations from two or more small
12 businesses.

13 (b) In carrying out subdivision (a), state agencies shall
14 consider a responsive offer timely received from a
15 responsible small business.

16 (c) If the estimated cost to the state is less than two
17 thousand five hundred dollars (\$2,500) and for the
18 acquisition of goods, services, or information technology,
19 or a greater amount as administratively established by the
20 director, a state agency shall obtain at least two price
21 quotations from responsible suppliers whenever there is
22 reason to believe a response from a single source is not a
23 fair and reasonable price.

24 SEC. 73. Section 18523.3 of the Government Code is
25 amended to read:

26 18523.3. (a) Notwithstanding Section 18523, this
27 section shall apply only to state employees in State
28 Bargaining Unit 19.

29 (b) “Class” means a group of positions sufficiently
30 similar with respect to duties and responsibilities that the
31 same title may reasonably and fairly be used to designate
32 each position allocated to the class~~—and~~, that substantially
33 the same tests of fitness may be used~~—and~~, that
34 substantially the same minimum qualifications may be
35 required, and that the same schedule of compensation
36 may be made to apply with equity.

37 (c) The board may also establish “broadband” classes
38 for which the same general title may be used to designate
39 each position allocated to the class and ~~which~~ *that* may
40 include more than one level or more than one specialty

1 area within the same general field ~~of~~ of work. In addition
2 to the minimum qualifications for each broadband class,
3 other job-related qualifications may be required for
4 particular positions within the class. When the board
5 establishes a broadband class, these levels and specialty
6 areas shall be described in the class specification, and the
7 board shall specify any instances in which these levels and
8 speciality areas are to be treated as separate classes for
9 purposes of applying other provisions of law.

10 SEC. 74. Section 19141.3 of the Government Code is
11 amended to read:

12 19141.3. (a) Notwithstanding Section 19141, this
13 section shall apply only to state employees in State
14 Bargaining Unit 19.

15 (b) This section applies only to a permanent
16 employee, or an employee who previously had
17 permanent status and who, since that permanent status,
18 has had no break in the continuity of his or her state
19 service due to a permanent separation. As used in this
20 section, “former position” is defined as in Section 18522,
21 or, if the appointing power to which reinstatement is to
22 be made and the employee agree, a vacant position in any
23 department, commission, or state agency for which he or
24 she is qualified at substantially the same level.

25 (c) Within the periods of time specified below, an
26 employee who vacates a civil service position to accept an
27 appointment to an exempt position shall be reinstated to
28 his or her former position ~~at the~~ upon termination either
29 by the employee or appointing power of the exempt
30 appointment, provided *that* he or she (1) accepted the
31 appointment without a break in the continuity of state
32 service; and (2) requests in writing reinstatement ~~of~~ by
33 the appointing power of his or her former position within
34 10 working days after the effective date of the
35 termination.

36 (d) The reinstatement may be requested by the
37 employee only within the following periods of time:

38 (1) At any time after the effective date of the exempt
39 appointment if the employee was appointed under one of
40 the following:

1 (A) Subdivision (a), (b), (c), (d), (e), (f), (g), or (m)
2 of Section 4 of Article VII of the California Constitution.

3 (B) Section 2.1 of Article IX of the California
4 Constitution.

5 (C) Section 22 of Article XX of the California
6 Constitution.

7 (D) To an exempt position under the same appointing
8 power as the former position even though a shorter
9 period of time may be otherwise specified for that
10 appointment.

11 (2) Within six months after the effective date of the
12 exempt appointment if appointed under subdivision (h),
13 (i), (k), or (l) of Section 4 of Article VII of the California
14 Constitution.

15 (3) ~~(4)~~ Within four years after the effective date of an
16 exempt appointment if appointed under any other
17 authority.

18 (e) An employee who vacates his or her civil service
19 position to accept an assignment as a member, inmate, or
20 patient helper under subdivision (j) of Section 4 of Article
21 VII of the California Constitution shall not have a right to
22 reinstatement.

23 (f) An employee who is serving under an exempt
24 appointment retains a right of reinstatement when he or
25 she accepts an extension of that exempt appointment or
26 accepts a new exempt appointment, provided *that* the
27 extension or new appointment is made within the
28 specified reinstatement time limit and there is no break
29 in the continuity of state service. ~~The period for which~~
30 ~~that reinstatement~~ right is retained ~~is~~ for the period
31 applicable to the extended or new exempt appointment
32 as if that appointment had been made on the date of the
33 initial exempt appointment.

34 (g) When an employee exercises his or her right of
35 reinstatement and returns to his or her former position,
36 the service while under an exempt appointment shall be
37 deemed to be time served in the former position for the
38 purpose of determining his or her eligibility for merit
39 salary increases.

(h) If the termination of an exempt appointment is for a reason contained in Section 19997 and the employee does not have a right to reinstatement, he or she shall have his or her name placed on the departmental and general reemployment lists for the class of his or her former position.

SEC. 75. Section 19175.6 of the Government Code is amended to read:

19175.6. (a) Notwithstanding Section 19175, this section ~~shall apply~~ *applies* only to state employees in State Bargaining Unit 19.

(b) The board at the written request of a rejected probationer, filed within 15 calendar days of the effective date of rejection, shall only review allegations that the rejection was made for reasons of discrimination as defined for the purposes of subdivision (a) of Section 19702, fraud, or political patronage. If the board determines that the rejected probationer has stated a *prima facie* case of discrimination, fraud, or political patronage, the board may investigate the case with or without a hearing, and do any one of the following:

(1) Affirm the action of the appointing power.

(2) Modify the action of the appointing power.

(3) Restore the name of the rejected probationer to the employment list for certification to any position within the class, provided that his or her name shall not be certified to the agency by which he or she was rejected; except with the concurrence of the appointing power thereof.

(4) Restore the rejected probationer to the position from which he or she was rejected, ~~but this shall be done~~ only if the board determines that there is substantial evidence to support that the rejection was made for reasons of discrimination as defined for the purposes of subdivision (a) of Section 19702, fraud, or political patronage. At ~~any such~~ *the* investigation or hearing the rejected probationer shall have the burden of proof; subject to rebuttal by him or her, it shall be presumed that the rejection was free from discrimination, fraud, and

1 political patronage, and that the statement of reasons
2 therefor in the notice of rejection is true.

3 SEC. 76. Section 19576.5 of the Government Code is
4 amended to read:

5 19576.5. Notwithstanding Section 19576, this section
6 ~~shall apply~~ *applies* only to state employees in State
7 Bargaining Unit 8.

8 (a) Minor discipline is a suspension without pay for
9 five days or less or up to a 5-percent reduction in pay for
10 five months or less. Whenever an answer is filed by an
11 employee who is subject to minor discipline, and the
12 memorandum of understanding for state employees in
13 State Bargaining Unit 8 has expired, the state employer
14 shall follow the minor discipline appeal procedures
15 contained in the expired memorandum of understanding
16 for state employees in State Bargaining Unit 8 until a
17 successor agreement is negotiated between *the*
18 Department of Personnel Administration and the
19 exclusive representative. However, if an employee
20 receives one of the cited actions in more than three
21 instances in any 12-month period, he or she shall, upon
22 each additional action within the same 12-month period,
23 be afforded a hearing before the State Personnel Board
24 if he or she files an answer to the action.

25 (b) The State Personnel Board shall not have the
26 authority ~~as~~ stated in subdivision (a) with regard to
27 written or oral reprimands. Reprimands shall not be
28 grievable or appealable by the receiving employee by
29 any means. Rejections on probation shall not be grievable
30 or appealable by the receiving employee by any means
31 except as provided in Section 19175.1.

32 (c) The appointing power shall not impose any
33 discipline in a manner that is inconsistent with “salary
34 basis test” against an employee employed in an executive,
35 administrative, or professional capacity and whose duties
36 exempt him or her from the wage and hour provisions of
37 the federal Fair Labor Standards Act as set forth pursuant
38 to Section 13(a)(1) of the Fair Labor Standards Act of
39 1938, as amended (29 U.S.C. Sec. 213(a)(1)), and in Part
40 54 of Title 29 of the Code of Federal Regulations, as

defined and delimited on the effective date of this section, and as those provisions may be amended in the future by the Administrator of the Wage and Hour Division of the United States Department of Labor.

(d) Disciplinary action taken pursuant to this section shall not be subject to *any of* the following provisions: Sections 19180, 19574.1, 19574.2, 19575, 19575.5, 19579, 19580, 19581, 19581.5, 19582, 19583, and 19587, and State Personnel Board Rules 51.1 to 51.9, inclusive, 52, and 52.1 to 52.5, inclusive.

(e) Notwithstanding any other law or rule, if ~~the provisions~~ *any provision* of this section ~~are~~ *is* in conflict with ~~the provisions~~ *any provision* of the memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if ~~the~~ provisions of a memorandum of understanding require the expenditure of funds, ~~the~~ *those* provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

(f) If the State Personnel Board establishes regulations to implement this section, the regulations shall be consistent with the expired memorandum of understanding for state employees in State Bargaining Unit 8 and the Ralph C. Dills Act (Part 10.3 (commencing with Section 3512) of Division 4 of Title 1).

SEC. 77. Section 19582.3 of the Government Code is amended to read:

19582.3. (a) Notwithstanding Section 19582, this section ~~shall apply~~ *applies* only to state employees in State Bargaining Unit 19.

(b) The board's review of decisions of minor discipline, as defined by a memorandum of understanding or by Section 19576.4, shall be limited to either adopting the penalty of the proposed decision or revoking the disciplinary action in its entirety.

(c) The board's review of decisions of discipline, including minor discipline, shall not impose any discipline against an employee that would jeopardize the employee's status under the federal Fair Labor Standards

1 Act, as set forth pursuant to Section 13(a)(1) of ~~The the~~
2 Fair Labor Standards Act of 1938, as amended (~~Title 29,~~
3 ~~Section 213(a)(1), United States Code~~) (*29 U.S.C. Sec.*
4 *213(a)(1)*) and in Part 54 of Title 29 of the Code of
5 Federal Regulations, as defined and delimited on the
6 effective date of this section and as those provisions
7 ~~may be~~ *may be* amended in the future.

8 (d) If ~~provisions~~ *any provision* of this section ~~are~~ *is* in
9 conflict with ~~the provisions~~ *any provision* of a
10 memorandum of understanding reached pursuant to
11 Section 3517.5, the memorandum of understanding shall
12 be controlling without further legislative action, except
13 that if ~~such provisions~~ *any provision* of a memorandum of
14 understanding ~~require~~ *requires* the expenditure of funds,
15 the provision shall not become effective unless approved
16 by the Legislature in the annual Budget Act.

17 SEC. 78. Section 20068.2 of the Government Code is
18 amended to read:

19 20068.2. (a) Notwithstanding Section 20068, this
20 section ~~shall apply~~ *applies* only to state employees in State
21 Bargaining Unit 19.

22 (b) “State safety service” means service rendered as a
23 state safety member only while receiving compensation
24 for that service, except as provided in Article 4
25 (commencing with Section 20990) of Chapter 11. It also
26 includes service rendered in an employment in which
27 persons have since become state safety members and
28 service rendered prior to April 1, 1973, and falling within
29 the definition of warden, forestry, and law enforcement
30 service under this chapter prior to April 1, 1973. “State
31 safety service” pursuant to this subdivision does not
32 include service as an investigator prior to April 1, 1973,
33 within the Department of Justice ~~of~~ *by* persons who, prior
34 to April 1, 1973, were ~~elassed~~ *classified* as miscellaneous
35 members.

36 (c) “State safety ~~service~~” *service,*” with respect to a
37 member who becomes a state safety member pursuant to
38 Section 20405 ~~shall~~, also ~~include~~ *includes* service prior to
39 the date on which he or she becomes a state safety
40 member as an officer or employee of the Board of Prison

1 Terms, Department of Corrections, Prison Industry
2 Authority, or the Department of the Youth Authority.

3 (d) “State safety ~~service~~ *service*,” with respect to a
4 member who becomes a state safety member pursuant to
5 Sections 20409 and 20410—~~shall, also—include~~ *includes*
6 service in a class specified in ~~these~~ *those* sections or
7 service pursuant to subdivision (a); prior to September
8 27, 1982.

9 (e) “State safety service,” with respect to a member
10 who becomes a state safety member pursuant to Sections
11 20414 and 20415, shall also include service prior to
12 September 22, 1982, as an officer or employee of the
13 Department of Parks and Recreation or the Military
14 Department.

15 (f) “State safety service” does not include service in
16 classes specified in Section 20407 prior to January 1, 1989.

17 (g) “State safety service” does not include service in
18 classes specified in Section 20408 prior to January 1, 1990.

19 (h) “State safety service,” with respect to a member
20 who becomes a state safety member pursuant to
21 subdivision (b) of Section 20405.3, shall also include
22 service rendered in an employment in which persons
23 have since become state safety members, as determined
24 by the Department of Personnel Administration
25 pursuant to that section.

26 SEC. 79. Section 20677 of the Government Code is
27 amended to read:

28 20677. (a) (1) The normal rate of contribution for a
29 state miscellaneous member whose service is not
30 included in the federal system shall be 6 percent of the
31 compensation in excess of three hundred seventeen
32 dollars (\$317) per month paid that member for service
33 rendered on and after July 1, 1976. The normal rate of
34 contribution for a school member; or a local
35 miscellaneous member shall be 7 percent of the
36 compensation paid that member for service rendered on
37 and after June 21, 1971.

38 (2) The normal rate of contribution for a state
39 miscellaneous or industrial member; who has elected to
40 be subject to Section 21353.5 and whose service is not

1 included in the federal system; shall be 6 percent of the
2 member's compensation.

3 (3) The normal rate of contribution, as established
4 under this subdivision for a member whose service is
5 included in the federal system, and whose service
6 retirement allowance is reduced under Section 21353,
7 21353.5, or ~~Section~~ 21354 because of that inclusion, shall
8 be reduced by one-third as applied to compensation not
9 exceeding four hundred dollars (\$400) per month for
10 service after the date of execution of the agreement,
11 including service in the federal system and prior to
12 termination of the agreement, with respect to the
13 coverage group to which he or she belongs.

14 (b) (1) The normal rate of contribution for a state
15 miscellaneous member whose service has been included
16 in the federal system shall be 5 percent of compensation
17 in excess of five hundred thirteen dollars (\$513) per
18 month paid that member for service rendered on and
19 after July 1, 1976.

20 (2) The normal rate of contribution for a state
21 miscellaneous or industrial member; who has elected to
22 be subject to Section 21353.5 and whose service has been
23 included in the federal system; shall be 5 percent of
24 compensation, subject to the reduction specified in
25 paragraph (3) of subdivision (a).

26 (c) The normal rate of contribution for a state
27 miscellaneous or industrial member who elects to
28 become subject to Section 21076 or ~~Section~~ 21077 shall be
29 0 zero percent, unless the member subsequently elects to
30 become subject to Section 21353, as authorized by
31 subdivision (c) of Section 21070 or Section 21353.5. A
32 member who elects to become subject to Section 21353
33 shall contribute at the rate specified in paragraph (1) of
34 subdivision (a) or paragraph (1) of subdivision (b), as
35 determined by the member's status with the federal
36 system, and the rate shall be applied from the first of the
37 month following the date of the election. A member who
38 makes the election shall also contribute for service prior
39 to the date the contribution rate was applied, in the
40 manner specified in Section 21073. A member who

1 elected to become subject to Section 21353 solely for
2 service rendered on or after the effective date of the
3 election, as authorized by subdivision (c) of Section 21070
4 during the period between November 1, 1988, and
5 October 31, 1989, is not required to make the
6 contributions specified in Section 21073.

7 SEC. 80. Section 21028 of the Government Code is
8 amended to read:

9 21028. "Public service" also means service in
10 temporary, seasonal, limited term, ~~on call~~ *on call*,
11 emergency, intermittent, substitute, or other irregular
12 employment in which a person is excluded from
13 membership.

14 SEC. 81. Section 22200 of the Government Code is
15 amended to read:

16 22200. The board is hereby authorized on behalf of
17 the State to administer and to maintain in full force and
18 effect the agreement entered into between the State and
19 the Federal Security Administrator on March 9, 1951, and
20 all ~~modifications~~ *modifications* thereof heretofore made.

21 SEC. 82. Section 22209 of the Government Code is
22 amended to read:

23 22209. At the request of a public agency, or as
24 otherwise permitted by the board, any class or classes of
25 positions covered by a retirement system which may be
26 excluded from coverage under the federal system
27 pursuant to paragraph (3) or (5) of Section 218(c) of the
28 Social Security Act, and to which the ~~agreement~~
29 *agreement* does not already apply, may be excluded from
30 the agreement at the time it is made applicable to such
31 retirement system; except that such exclusion shall not
32 include any services to which Section 218(c)(3)(B) of the
33 Social Security Act is applicable.

34 SEC. 83. Section 22754.5 of the Government Code is
35 amended to read:

36 22754.5. (a) Notwithstanding Section 22754, for state
37 employees in State Bargaining Unit 8 or 16 and members
38 of State Bargaining Unit 8 or 16 who retire on or after the
39 effective date of this section and who meet the definition
40 of annuitant, "eligible family member" means:

1 (1) The legal spouse in a marriage recognized by the
2 state.

3 (2) A child under the age of 19 years who has never
4 been married or who has obtained a legal annulment.
5 This includes:

6 (A) The natural or adopted child, or stepchild, of the
7 employee or annuitant.

8 (B) A child, who is not the natural or adopted child, or
9 stepchild, of the employee or annuitant and who is not
10 receiving or eligible for coverage through another source
11 and who meets either of the following conditions:

12 (i) The employee or annuitant has legal or joint
13 custody of the child.

14 (ii) The child is a grandchild living in the household of
15 the employee or annuitant, and the natural parent or
16 parents are not living in the same household.

17 (3) A child over the age of 19 years but under the age
18 of 23 years who has never been married or who has
19 obtained a legal annulment and meets the criteria of
20 subparagraph (A) or (B) of paragraph (2) may continue
21 to be enrolled if the child is one of the following:

22 (A) Enrolled on an ongoing basis as a college student
23 for at least nine semester college units or equivalent
24 quarter units.

25 (B) Enrolled on an ongoing basis in an adult
26 continuation school curriculum that would result in a
27 high school diploma or its equivalent. An employee or
28 annuitant whose child continues to be enrolled under this
29 paragraph must provide the employer or benefit carrier,
30 *upon request*, with an annual certification of schooling or
31 enrollment ~~upon request~~.

32 (4) A child under the age of 19 years who has never
33 been married or who has obtained a legal annulment may
34 continue to be enrolled after attaining the age of 19 years
35 if he or she is incapable of self-support because of physical
36 disability or mental incapacity and he or she is dependent
37 on the employee or annuitant for support and care. A
38 disabled child may continue to be enrolled after attaining
39 the age of 19 years only if he or she was enrolled as
40 disabled at the time of the employee's initial enrollment

1 or became disabled while enrolled as an eligible family
2 member prior to attaining the age of 19 years. The
3 employee or annuitant must provide satisfactory
4 evidence of the disability within 60 days after the disabled
5 child attains the age of 19 years. Necessary
6 documentation, as prescribed by the employer, must be
7 completed, processed, and approved by the Public
8 Employees' Retirement System. An annual certification
9 of continued disability may be required.

10 (b) At the time of enrollment or audit, an employee or
11 annuitant will be required to provide proof of eligibility
12 for all enrolled family members that may include any of
13 the following: ~~(1) a~~

14 (1) A valid marriage certificate, ~~(2) a.~~

15 (2) A birth certificate, ~~(3) a.~~

16 (3) A certification of disability, ~~(4) legal.~~

17 (4) Legal custody documents, ~~and (5) a.~~

18 (5) A copy of the employee's or annuitant's signed
19 state income tax return.

20 SEC. 84. Section 54953 of the Government Code, as
21 added by Section 2 of Chapter 399 of the Statutes of 1988,
22 is repealed.

23 ~~54953. All meetings of the legislative body of a local~~
24 ~~agency shall be open and public, and all persons shall be~~
25 ~~permitted to attend any meeting of the legislative body~~
26 ~~of a local agency, except as otherwise provided in this~~
27 ~~chapter.~~

28 ~~This section shall become operative January 1, 1994.~~

29 SEC. 85. Section 54975 of the Government Code is
30 amended to read:

31 54975. The board of supervisors shall include in the
32 Local Appointments List prepared pursuant to Section
33 54972 all appointments of public members and alternate
34 public members made to the local agency formation
35 commission pursuant to Sections ~~54780, 54781, 54782,~~
36 ~~54782.5, and 54782.7~~ 56325, 56329, 56330, 56331, and 56333.

37 Whenever an unscheduled vacancy occurs in a local
38 agency formation commission, the board of supervisors
39 shall cause a special vacancy notice to be posted as
40 provided in Section 54974. Final appointment to fill the

1 vacancy—~~shall~~ *may* not be made by the appointing body
2 for at least 10 working days after the posting of the notice.

3 SEC. 86. The heading of Article 5 (commencing with
4 Section 63043) of Chapter 2 of Division 1 of Title 6.7 of the
5 Government Code is amended to read:

6
7 Article 5. Financing ~~Public~~ *Economic* Development
8 Facilities
9

10 SEC. 87. The heading of Chapter 6 (commencing
11 with Section 66400) of Division 1 of Title 7 of the
12 Government Code is amended and renumbered to read:

13
14 CHAPTER ~~6.~~ 10. HIGHWAY INTERCHANGE DISTRICTS

15 SEC. 88. Section 66400 of the Government Code is
16 amended and renumbered to read:

17 ~~66400.~~

18 *66100.* The Legislature finds and declares that ~~since,~~
19 *because* substantial public moneys will be expended on
20 the development of the ~~Westside~~ *West Side* Freeway;
21 *portion of* Interstate Route 5, including the development
22 of recreational and scenic observation sites; in relatively
23 undeveloped areas, and ~~since because~~ new commercial
24 and other development tends to locate at freeway
25 interchanges in ~~such~~ *these* areas, and ~~such~~ *this*
26 development may be detrimental to both traffic capacity
27 and safety and to the preservation of the scenic
28 characteristics along the freeway route, it is therefore
29 necessary, in the interests of the public health, safety, and
30 welfare, and to safeguard community economic
31 development along the route of ~~said the~~ freeway, to
32 establish controls over the kinds, intensity, and design of
33 land use and development ~~which is that are~~ permitted to
34 occur at those interchanges along ~~said the~~ freeway route
35 from its intersection with the San Joaquin River to the
36 junction of ~~said the~~ route with ~~United States Highway~~
37 *State Highway Route 99* in the vicinity of Wheeler Ridge.

38 SEC. 89. Section 66401 of the Government Code is
39 amended and renumbered to read:

40 ~~66401.~~

1 66101. To preserve the effective traffic capacity and
2 safety of the ~~Westside West Side~~ Freeway, to maintain
3 and enhance the present character of the landscape
4 abutting ~~said the~~ freeway, and to ~~insure~~ ensure
5 compatible land use and development at and near
6 interchanges along ~~said the~~ route, the kind, intensity, and
7 design of land use and development occurring at the
8 freeway interchanges on the portion of the ~~Westside West~~
9 ~~Side~~ Freeway designated in Section ~~66400~~ 66100 shall be
10 regulated within highway interchange districts, which
11 districts shall be established by each local jurisdiction
12 traversed by the ~~Westside West Side~~ Freeway in which is
13 located any of the interchanges identified ~~herein~~ in this
14 chapter.

15 SEC. 90. Section 66402 of the Government Code is
16 amended and renumbered to read:

17 ~~66402.~~

18 66102. The boundaries of each ~~such~~ district shall be
19 designated by the local jurisdiction within which each
20 ~~such~~ interchange is located and shall include ~~such the~~
21 territory ~~as that~~ the local ~~jurisdiction~~ jurisdiction deems
22 to be affected by each interchange, but in no case shall the
23 area consist of less than a circle of one-mile radius from
24 the point of intersection of the centerline of the ~~Westside~~
25 ~~West Side~~ Freeway with the centerline of any highway,
26 street, or road intersecting at an interchange.

27 SEC. 91. Section 66403 of the Government Code is
28 amended and renumbered to read:

29 ~~66403.~~

30 66103. Each local jurisdiction shall prepare for each
31 ~~such~~ highway interchange district a general land use plan
32 and appropriate zoning ordinances by January 1, 1964. It
33 shall be recognized that ~~the State~~ this state has a
34 continuing interest in adequate enforcement of ~~such~~
35 these plans and ordinances due to construction by ~~the~~
36 ~~State this state~~ of the ~~Westside West Side~~ Freeway.

37 SEC. 92. Section 1206 of the Health and Safety Code
38 is amended to read:

39 1206. This chapter does not apply to the following:

1 (a) Except with respect to the option provided with
2 regard to surgical clinics in paragraph (1) of subdivision
3 (b) of Section 1204 and, further, with respect to specialty
4 clinics specified in paragraph (2) of subdivision (b) of
5 Section 1204, any place or establishment owned or leased
6 and operated as a clinic or office by one or more licensed
7 health care practitioners and used as an office for the
8 practice of their profession, within the scope of their
9 license, regardless of the name used publicly to identify
10 the place or establishment.

11 (b) Any clinic directly conducted, maintained, or
12 operated by the United States or by any of its
13 departments, officers, or agencies, and any primary care
14 clinic specified in subdivision (a) of Section 1204 ~~which~~
15 *that* is directly conducted, maintained, or operated by
16 this state or by any of its political subdivisions or districts,
17 or by any city. Nothing in this subdivision precludes the
18 state department from adopting regulations ~~which~~ *that*
19 utilize clinic licensing standards as eligibility criteria for
20 participation in programs funded wholly or partially
21 under Title XVIII or XIX of the federal Social Security
22 Act.

23 (c) Any clinic conducted, maintained, or operated by
24 a federally recognized Indian tribe or tribal organization,
25 as defined in Section 450 or 1601 of Title 25 of the United
26 States Code, and which is located on land recognized as
27 tribal land by the federal government.

28 (d) Clinics conducted, operated, or maintained as
29 outpatient departments of hospitals.

30 (e) Any facility licensed as a health facility under
31 Chapter 2 (commencing with Section 1250).

32 (f) Any freestanding clinical or pathological
33 laboratory licensed under Chapter 3 (commencing with
34 Section 1200) of Division 2 of the Business and Professions
35 Code.

36 (g) A clinic operated by, or affiliated with, any
37 institution of learning ~~which~~ *that* teaches a recognized
38 healing art and is approved by the state board or
39 commission vested with responsibility for regulation of
40 the practice of that healing art.

(h) A clinic ~~which~~ *that* is operated by a primary care community or free clinic and ~~which~~ *that* is operated on separate premises from the licensed clinic and is only open for limited services of no more than 20 hours a week. An intermittent clinic as described in this paragraph shall, however, meet all other requirements of law, including administrative regulations and requirements, pertaining to fire and life safety.

(i) The offices of physicians in group practice who provide a preponderance of their services to members of a comprehensive group practice prepayment health care service plan subject to Chapter 2.2 (commencing with Section 1340) ~~of Division 2.~~

(j) Student health centers operated by public institutions of higher education.

(k) Nonprofit speech and hearing centers, as defined in Section 1201.5. Any nonprofit speech and hearing clinic desiring an exemption under this subdivision shall make application therefor to the director, who shall grant the exception to any facility meeting the criteria of Section 1201.5. Notwithstanding the licensure exemption contained in this subdivision, a nonprofit speech and hearing center shall be deemed to be an organized outpatient clinic for purposes of qualifying for reimbursement as a rehabilitation center under the Medi-Cal Act, ~~Chapter~~ *(Chapter 7* (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions ~~Code Code~~).

(l) A clinic operated by a nonprofit corporation exempt from federal income taxation under paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code of 1954, as amended, or a statutory successor thereof, ~~which~~ *that* conducts medical research and health education and provides health care to its patients through a group of 40 or more physicians and surgeons, who are independent contractors representing not less than 10 board-certified specialties, and not less than two-thirds of whom practice on a full-time basis at the clinic.

1 (m) Any clinic, limited to in vivo diagnostic services by
2 magnetic resonance imaging functions or radiological
3 services under the direct and immediate supervision of a
4 physician and surgeon who is licensed to practice in
5 California. This shall not be construed to permit cardiac
6 catheterization or any treatment modality in these
7 clinics.

8 (n) A clinic operated by an employer or jointly by two
9 or more employers for their employees only, or by a
10 group of employees, or jointly by employees and
11 employers, without profit to the operators thereof or to
12 any other person, for the prevention and treatment of
13 accidental injuries to, and the care of the health of, the
14 employees comprising the group.

15 (o) A community mental health center as defined in
16 Section 5601.5 of the Welfare and Institutions Code.

17 (p) (1) A clinic operated by a nonprofit corporation
18 exempt from federal income taxation under paragraph
19 (3) of subsection (c) of Section 501 of the Internal
20 Revenue Code of 1954, as amended, or a statutory
21 successor thereof, as an entity organized and operated
22 exclusively for scientific and charitable purposes and that
23 satisfies all of the following requirements:

24 (A) Commenced conducting medical research on or
25 before January 1, 1982, and continues to conduct medical
26 research.

27 (B) Conducted research in, among other areas,
28 prostatic cancer, cardiovascular disease, electronic neural
29 prosthetic devices, biological effects and medical uses of
30 lasers, and human magnetic resonance imaging and
31 spectroscopy.

32 (C) Sponsored publication of at least 200 medical
33 research articles in peer-reviewed publications.

34 (D) Received grants and contracts from the National
35 Institutes of Health.

36 (E) Held and licensed patents on medical technology.

37 (F) Received charitable contributions and bequests
38 totaling at least five million dollars (\$5,000,000).

39 (G) Provides health care services to patients only:

1 (i) In conjunction with research being conducted on
 2 procedures or applications not approved or only partially
 3 approved for payment (I) under the Medicare program
 4 pursuant to Section 1359y (a)(1)(A) of Title 42 of the
 5 United States Code, or (II) by a health care service plan
 6 registered under Chapter 2.2 (commencing with Section
 7 1340) ~~of Division 2~~ or a disability insurer regulated under
 8 Chapter 1 (commencing with Section 10110) of Part 2 of
 9 Division 2 of the Insurance Code; provided that services
 10 may be provided by the clinic for an additional period of
 11 up to three years following ~~such~~ *the* approvals, but only
 12 to the extent necessary to maintain clinical expertise in
 13 the procedure or application for purposes of actively
 14 providing training in the procedure or application for
 15 physicians and surgeons unrelated to the clinic.

16 (ii) Through physicians and surgeons who, in the
 17 aggregate, devote no more than 30 percent of their
 18 professional time for the entity operating; the clinic, on
 19 an annual basis, to direct patient care activities for which
 20 charges for professional services are paid.

21 (H) Makes available to the public the general results
 22 of its research activities on at least an annual basis, subject
 23 to good faith protection of proprietary rights in its
 24 intellectual property.

25 (I) Is a freestanding clinic, whose operations under
 26 this subdivision are not conducted in conjunction with
 27 any affiliated or associated health clinic or facility defined
 28 under ~~Division 2 (commencing with Section 1200)~~ *this*
 29 *division*, except a clinic exempt from licensure under
 30 subdivision (m). For purposes of this subparagraph, a
 31 freestanding clinic is defined as “affiliated” only if it
 32 directly, or indirectly through one or more
 33 intermediaries, controls, or is controlled by, or is under
 34 common control with, a clinic or health facility defined
 35 under ~~Division 2 (commencing with Section 1200)~~ *this*
 36 *division*, except a clinic exempt from licensure under
 37 subdivision (m). For purposes of this subparagraph, a
 38 freestanding clinic is defined as “associated” only if more
 39 than 20 percent of the directors or trustees of the clinic
 40 are also the directors or trustees of any individual clinic

1 or health facility defined under ~~Division 2 (commencing~~
2 ~~with Section 1200)~~ *this division*, except a clinic exempt
3 from licensure under subdivision (m). Any activity by a
4 clinic under this subdivision in connection with an
5 affiliated or associated entity shall fully comply with the
6 requirements of this subdivision. This subparagraph shall
7 not apply to agreements between a clinic and any entity
8 for purposes of coordinating medical research.

9 (2) This subdivision shall ~~remain operative only until~~
10 *become inoperative on* January 1, 2003. Prior to extending
11 or deleting that ~~operative inoperative~~ date, the
12 Legislature shall receive a report from each clinic
13 meeting the criteria of this subdivision and any other
14 interested party concerning the operation of the clinic's
15 activities. The report shall include, but not be limited to,
16 an evaluation of how the clinic impacted competition in
17 the relevant health care market, and a detailed
18 description of the clinic's research results and the level of
19 acceptance by the payer community of the procedures
20 performed at the clinic. The report shall also include a
21 description of procedures performed both in clinics
22 governed by this subdivision and those performed in
23 other settings.

24 SEC. 93. Section 1261.5 of the Health and Safety Code
25 is amended to read:

26 1261.5. (a) The number of oral dosage form or
27 suppository form drugs provided by a pharmacy to a
28 health facility licensed pursuant to subdivision (c); *or* (d),
29 or both (c) and (d), of Section 1250 for storage in a
30 secured emergency supplies container, pursuant to
31 Section 4035 of the Business and Professions Code, shall
32 be limited to 24. The State Department of Health Services
33 may limit the number of doses of each drug available to
34 not more than four doses of any separate drug dosage
35 form in each emergency supply.

36 (b) Any limitations established pursuant to subdivision
37 (a) on the number and quantity of oral dosage or
38 suppository form drugs provided by a pharmacy to a
39 health facility licensed pursuant to subdivision (c), (d),
40 or both (c) and (d), of Section 1250 for storage in a

1 secured emergency supplies container shall not apply to
2 an automated drug delivery system, as defined in Section
3 1261.6, when a pharmacist controls access to the drugs.
4 This subdivision shall become operative *on* July 1, 1999.

5 SEC. 94. Section 1261.6 of the Health and Safety Code
6 is amended to read:

7 1261.6. (a) For purposes of this section and Section
8 1261.5, an “automated drug delivery system” means a
9 mechanical system that performs operations or activities,
10 other than compounding or administration, relative to
11 the storage, dispensing, or distribution of drugs. An
12 automated drug delivery system shall collect, control, and
13 maintain all transaction information to accurately track
14 the movement of drugs into and out of the system for
15 security, accuracy, and accountability.

16 (b) Transaction information shall be made readily
17 available in a written format for review and inspection by
18 individuals authorized by law. These records shall be
19 maintained in the facility for a minimum of three years.

20 (c) Individualized and specific access to automated
21 drug delivery systems shall be limited to facility and
22 contract personnel authorized by law to administer
23 drugs.

24 (d) (1) The facility and the pharmacy shall develop
25 and implement written policies and procedures to ensure
26 safety, accuracy, accountability, security, patient
27 confidentiality, and maintenance of the quality, potency,
28 and purity of stored drugs. Policies and procedures shall
29 define access to the automated drug delivery system and
30 limits to access to equipment and drugs.

31 (2) All policies and procedures shall be maintained at
32 the location where the automated drug delivery system
33 is being used.

34 (e) Drugs removed from the automated drug delivery
35 system shall be limited to the following:

36 (1) A new drug order given by a prescriber for a
37 patient of the facility for administration prior to the next
38 scheduled delivery from the pharmacy, or 72 hours,
39 whichever is less. The drugs shall be retrieved only upon
40 authorization by a pharmacist and after the pharmacist

1 has reviewed the prescriber's order and the patient's
2 profile for potential contraindications and adverse drug
3 reactions.

4 (2) Drugs that a prescriber has ordered for a patient
5 on an as-needed basis, if the utilization and retrieval of
6 those drugs are subject to ongoing review by a
7 pharmacist.

8 (3) Drugs designed by the patient care policy
9 committee or pharmaceutical service committee of the
10 facility as emergency drugs or acute onset drugs. These
11 drugs may be retrieved from an automated drug delivery
12 system pursuant to the order of a prescriber for
13 emergency or immediate administration to a patient of
14 the facility. Within 48 hours after retrieval under this
15 paragraph, the case shall be reviewed by a pharmacist.

16 (f) The stocking of an automated drug delivery system
17 shall be performed by a pharmacist. If the automated
18 drug delivery system utilizes removable pockets or
19 drawers, or similar technology, the stocking system may
20 be done outside of the facility and be delivered to the
21 facility if all of the following conditions are met:

22 (1) The task of placing drugs into the removable
23 pockets or drawers is performed by a pharmacist or by;
24 an intern pharmacist; or a pharmacy technician working
25 under the direct supervision of a pharmacist.

26 (2) The removable pockets or drawers are transported
27 between the pharmacy and the facility in a secure
28 tamper-evident container.

29 (3) The facility, in conjunction with the pharmacy, has
30 developed policies and procedures to ensure that the
31 pockets or drawers are properly placed into the
32 automated drug delivery system.

33 (g) Review of the drugs contained within, and the
34 operation and maintenance of, the automated drug
35 delivery system shall be done in accordance with law and
36 shall be the responsibility of the pharmacy. The review;
37 ~~which~~ shall be conducted on a monthly basis; by a
38 pharmacist and shall include a physical inspection of the
39 drugs in the automated drug delivery system, an
40 inspection of the automated drug delivery system

1 machine for cleanliness, and a review of all transaction
2 records in order to verify the security and accountability
3 of the system.

4 (h) Drugs dispensed from an automated drug delivery
5 system that meets the requirements of this section shall
6 not be subject to the labeling requirements of Section
7 4076 of the Business and Professions Code or Section
8 111480 of this code if the drugs to be placed into the
9 automated drug delivery system are in unit dose
10 packaging or unit of use and if the information required
11 by Section 4076 of the Business and Professions Code and
12 Section 111480 of this code is readily available at the time
13 of drug administration.

14 ~~(h)~~

15 (i) This section shall become operative *on* July 1, 1999.

16 SEC. 95. Section 1300 of the Health and Safety Code
17 is amended to read:

18 1300. (a) Any licensee or holder of a special permit
19 may, with the approval of the state department,
20 surrender his or her license or special permit for
21 suspension or cancellation by the state department. Any
22 license or special permit suspended or canceled pursuant
23 to this section may be reinstated by the state department
24 on receipt of an application showing compliance with the
25 requirements of Section 1265.

26 (b) Before approving a downgrade or closure of
27 emergency services pursuant to subdivision (a), the state
28 department shall receive a copy of the impact evaluation
29 of the county to determine impacts, including, but not
30 limited to, an impact evaluation of the downgrade or
31 closure upon the community, including community
32 access to emergency care, and how that downgrade or
33 closure will affect emergency services provided by other
34 entities. Development of the impact evaluation shall
35 incorporate at least one public hearing. The county in
36 which the proposed downgrade or closure will occur shall
37 ensure the completion of the impact evaluation, and shall
38 notify the *state* department of results of an impact
39 evaluation within three days of the completion of that
40 evaluation. The county may designate the local



1 emergency medical services agency as the appropriate
2 agency to conduct the impact evaluation. The impact
3 evaluation and hearing shall be completed within 60 days
4 of the county receiving notification of intent to
5 downgrade or close emergency services. The county or
6 designated local emergency medical services agency
7 shall ensure that all hospital and prehospital health care
8 providers in the geographic area impacted by the service
9 closure or change are consulted with, and *that* local
10 emergency service agencies and planning or zoning
11 authorities are notified, prior to completing an impact
12 evaluation as required ~~in~~ *by* this section. This subdivision
13 shall be implemented on and after the date that the
14 county in which the proposed downgrade or closure will
15 occur, or its designated local emergency medical services
16 agency, has developed a policy specifying the criteria it
17 will consider in conducting an impact evaluation, as
18 required by subdivision ~~(b)~~ (c).

19 (c) The Emergency Medical Services Authority shall
20 develop guidelines for development of impact evaluation
21 policies. On or before June 30, 1999, each county or its
22 designated local emergency medical services agency
23 shall develop a policy specifying the criteria it will
24 consider in conducting an impact evaluation pursuant to
25 subdivision (b). Each county or its designated local
26 emergency medical services agency shall submit its
27 impact evaluation policy to the *state* department and the
28 Emergency Medical Services Authority within three days
29 of completion of the policy. The Emergency Medical
30 Services Authority shall provide technical assistance
31 upon request to a county or its designated local
32 emergency medical services agency.

33 SEC. 96. Section 1351.2 of the Health and Safety Code
34 is amended to read:

35 1351.2. (a) If a health care service plan licensed
36 under the laws of Mexico elects to operate a health care
37 service plan in this state, the plan shall apply for licensure
38 as a health care service plan under this chapter by filing
39 an application for licensure in the form prescribed by the
40 department and verified by an authorized representative

1 of the applicant. The plan shall be subject to the
2 provisions of this chapter, and the rules adopted by the
3 commissioner thereunder, as determined by the
4 commissioner to be applicable. The application shall be
5 accompanied by the fee prescribed by subdivision (a) of
6 Section 1356 and shall demonstrate compliance with the
7 following requirements:

8 (1) The plan is operating lawfully under the laws of
9 Mexico.

10 (2) The plan offers and sells in this state only
11 employer-sponsored group plan contracts exclusively for
12 the benefit of citizens of Mexico legally employed in this
13 state, and for the benefit of their dependents regardless
14 of nationality, that pay for, reimburse the cost of, or
15 arrange for the provision or delivery of health care
16 services that are to be provided or delivered wholly in
17 Mexico, except for the provision or delivery of those
18 health care services set forth in ~~subparagraphs (A) and~~
19 ~~(B) of paragraph (4).~~

20 (3) Solicitation of plan contracts in this state is made
21 only through insurance brokers and agents licensed in
22 this state or a third-party administrator licensed in this
23 state, each of which is authorized by the plan to offer and
24 sell plan group contracts.

25 (4) Group contracts provide, through a contract of
26 insurance between the plan and an insurer admitted in
27 this state, for the reimbursement of emergency and
28 urgent care services provided out of area as required by
29 subdivision (h) of Section 1345.

30 (5) All advertising, solicitation material, disclosure
31 statements, evidences of coverage, and contracts are in
32 compliance with the appropriate provisions of this
33 chapter and the rules or orders of the commissioner. The
34 commissioner shall require that each of these documents
35 contain a legend in 10-point type, in both English and
36 Spanish, declaring that the health care service plan
37 contract provided by the plan may be limited as to
38 benefits, rights, and remedies under state and federal law.

39 (6) All funds received by the plan from a subscriber
40 are deposited in an account of a bank organized under the

1 laws of this state or in an account of a national bank
2 located in this state.

3 (7) The plan maintains a tangible net equity as
4 required by this chapter and the rules of the
5 commissioner, as calculated under United States
6 generally accepted accounting principles, in the amount
7 of ~~a~~ at least one million dollars (\$1,000,000). In lieu of an
8 amount in excess of the minimum tangible net equity of
9 one million dollars (\$1,000,000), the plan may
10 demonstrate a reasonable acceptable alternative
11 reimbursement arrangement that the commissioner may
12 in his or her discretion accept. The plan shall also
13 maintain a fidelity bond and a surety bond as required by
14 Section 1376 and the rules of the commissioner.

15 (8) The plan agrees to make all of its books and
16 records, including the books and records of health care
17 providers in Mexico, available to the commissioner in the
18 form and at the time and place requested by the
19 commissioner. Books and records shall be made available
20 to the commissioner no later than 24 hours from the date
21 of the request.

22 (9) The plan files a consent to service of process with
23 the commissioner and agrees to be subject to the laws of
24 this state and the United States in any investigation,
25 examination, dispute, or other matter arising from the
26 advertising, solicitation, or offer and sale of a plan
27 contract, or the management or provision of health care
28 services in this state or throughout the United States. The
29 plan shall agree to notify the commissioner, immediately
30 and in no case later than one business day, if it is subject
31 to any investigation, examination, or administrative or
32 legal action relating to the plan or the operations of the
33 plan initiated by the government of Mexico or the
34 government of any state of Mexico against the plan or any
35 officer, director, security holder, or contractor owning 10
36 percent or more of the securities of the plan. The plan
37 shall agree that in the event of conflict of laws in any
38 action arising out of the license, the laws of California and
39 the United States shall apply.



(10) The plan agrees that disputes arising from the group contracts involving group contract holders and providers of health care services in the United States shall be subject to the jurisdiction of the courts of this state and the United States.

(b) The plan shall pay the application processing fee and other fees and assessments ~~set forth~~ *specified* in Section 1356. ~~The~~ *When consistent with the intent and purpose of this chapter and in the public interest, the* commissioner, by order, may designate provisions of this chapter and rules adopted thereunder that need not be applied to a health care service plan licensed under the laws of Mexico ~~when consistent with the intent and purpose of this chapter, and in the public interest.~~

SEC. 97. Section 1357.09 of the Health and Safety Code is amended to read:

1357.09. No plan shall be required to offer a health care service plan contract or accept applications for such a contract pursuant to this article in the case of any of the following:

(a) ~~To a~~ A small employer, where the small employer is not physically located in a plan's approved service areas, or where an eligible employee and dependents who are to be covered by the plan contract do not work or reside within a plan's approved service areas.

(b) ~~Within a~~ A specific service area or portion of a service area where a plan reasonably anticipates and demonstrates to the satisfaction of the commissioner that it will not have sufficient health care delivery resources to assure that health care services will be available and accessible to the eligible employee and dependents of the employee because of its obligations to existing enrollees.

(1) A plan that cannot offer a health care service plan contract to small employers because it is lacking in sufficient health care delivery resources within a service area or a portion of a service area may not offer a contract in the area in which the plan is not offering coverage to small employers to new employer groups with more than 50 eligible employees until the plan notifies the commissioner that it has the ability to deliver services to

1 small employer groups, and certifies to the commissioner
2 that from the date of the notice it will enroll all small
3 employer groups requesting coverage in that area from
4 the plan unless the plan has met the requirements of
5 subdivision (d).

6 (2) Nothing in this article shall be construed to limit
7 the commissioner's authority to develop and implement
8 a plan of rehabilitation for a health care service plan
9 whose financial viability or organizational and
10 administrative capacity have become impaired.

11 ~~(c) Offer coverage to a~~ A small employer or an eligible
12 employee as defined under paragraph (2) of subdivision
13 (b) of Section 1357 ~~which~~ *who*, within 12 months of
14 application for coverage, disenrolled from a plan contract
15 offered by the plan.

16 (d) ~~The~~ *A case in which the* commissioner approves
17 the plan's certification that the number of eligible
18 employees and dependents enrolled under contracts
19 issued during the current calendar year equals or exceeds
20 (1) in the case of a plan that administers any self-funded
21 health coverage arrangements in California, 10 percent
22 of the total enrollment of the plan in California as of
23 December 31 of the preceding year, or (2) in the case of
24 a plan that does not administer any self-funded health
25 coverage arrangements in California, 8 percent of the
26 total enrollment of the plan in California as of December
27 31 of the preceding year. If that certification is approved,
28 the plan ~~shall~~ *may* not offer any health care service plan
29 contract to any small employers during the remainder of
30 the current year.

31 (1) If a health care service plan treats an affiliate or
32 subsidiary as a separate carrier for the purpose of this
33 article because one health care service plan is qualified
34 under the federal Health Maintenance Organization Act
35 and does not offer coverage to small employers, while the
36 affiliate or subsidiary offers a plan contract that is not
37 qualified under the federal Health Maintenance
38 Organization Act and offers plan contracts to small
39 employers, the health care service plan offering coverage
40 to small employers shall enroll new eligible employees

1 and dependents, equal to the applicable percentage of
2 the total enrollment of both the health care service plan
3 qualified under the federal Health Maintenance
4 Organization Act and its affiliate or subsidiary.

5 (2) The certified statement filed pursuant to this
6 subdivision shall state the following:

7 (A) Whether the plan administers any self-funded
8 health coverage arrangements in California.

9 (B) The plan's total enrollment as of December 31 of
10 the preceding year.

11 (C) The number of eligible employees and
12 dependents enrolled under contracts issued to small
13 employer groups during the current calendar year.

14 The commissioner shall, within 45 days, approve or
15 disapprove the certified statement. If the certified
16 statement is disapproved, the plan shall continue to issue
17 coverage as required by Section 1357.03 and be subject to
18 disciplinary action as ~~set forth in~~ *prescribed by* Article 7
19 (commencing with Section 1386).

20 (e) A health care service plan that, as of December 31
21 of the prior year, had a total enrollment of fewer than
22 100,000 and 50 percent or more of the plan's total
23 enrollment have premiums paid by the Medi-Cal
24 program.

25 (f) A social health maintenance organization, as
26 described in subdivision (a) of Section 2355 of the federal
27 Deficit Reduction Act of 1984 (Public Law 97-369), that,
28 as of December 31 of the prior year, had a total
29 enrollment of fewer than 100,000 and has 50 percent or
30 more of the organization's total enrollment premiums
31 paid by the Medi-Cal program or Medicare programs, or
32 by a combination of Medi-Cal and Medicare. In no event
33 shall this exemption be based upon enrollment in
34 Medicare supplement contracts, as described in Article
35 3.5 (commencing with Section 1358).

36 SEC. 98. Section 1357.50 of the Health and Safety
37 Code is amended to read:

38 1357.50. For purposes of this article:

39 (a) "Health benefit plan" means any individual or
40 group, insurance policy or health care service plan

1 contract; that provides medical, hospital, and surgical
2 benefits. The term does not include accident only, credit,
3 disability income, coverage of Medicare services
4 pursuant to contracts with the United States government,
5 Medicare supplement, long-term care insurance, dental,
6 vision, coverage issued as a supplement to liability
7 insurance, insurance arising out of a workers'
8 compensation or similar law, automobile medical
9 payment insurance, or insurance under which benefits
10 are payable with or without regard to fault and that is
11 statutorily required to be contained in any liability
12 insurance policy or equivalent self-insurance.

13 (b) "Late enrollee" means an eligible employee or
14 dependent who has declined health coverage under a
15 health benefit plan offered through employment or
16 sponsored by an employer at the time of the initial
17 enrollment period provided under the terms of the
18 health benefit plan, and who subsequently requests
19 enrollment in a health benefit plan of that employer,
20 provided that the initial enrollment period shall be a
21 ~~period of~~ at least 30 days. However, an eligible employee
22 or dependent shall not be considered a late enrollee if any
23 of the following is applicable:

24 (1) The individual meets all of the following
25 requirements:

26 (A) The individual was covered under another
27 employer health benefit plan or ~~no-share-of-cost~~
28 *no-share-of-cost* Medi-Cal coverage at the time the
29 individual was eligible to enroll.

30 (B) The individual certified, at the time of the initial
31 enrollment that coverage under another employer health
32 benefit plan or ~~no-share-of-cost~~ *no-share-of-cost* Medi-Cal
33 coverage was the reason for declining enrollment,
34 provided that, if the individual was covered under
35 another employer health benefit plan, the individual was
36 given the opportunity to make the certification required
37 by this subdivision and was notified that failure to do so
38 could result in later treatment as a late enrollee.

39 (C) The individual has lost or will lose coverage under
40 another employer health benefit plan as a result of

1 termination of employment of the individual or of a
2 person through whom the individual was covered as a
3 dependent, change in employment status of the
4 individual or of a person through whom the individual
5 was covered as a dependent, termination of the other
6 plan's coverage, cessation of an employer's contribution
7 toward an employee or dependent's coverage, death of a
8 person through whom the individual was covered as a
9 dependent, legal separation, divorce, or loss of ~~no~~
10 ~~share-of-cost~~ *no-share-of-cost* Medi-Cal coverage.

11 (D) The individual requests enrollment within 30 days
12 after termination of coverage, or cessation of employer
13 contribution toward coverage provided under another
14 employer health benefit plan.

15 (2) The individual is employed by an employer that
16 offers multiple health benefit plans and the individual
17 elects a different plan during an open enrollment period.

18 (3) A court has ordered that coverage be provided for
19 a spouse or minor child under a covered employee's
20 health benefit plan. The health benefit plan shall enroll
21 a dependent child within 30 days after receipt of a court
22 order or request from the district attorney, either parent
23 or the person having custody of the child as defined in
24 Section 3751.5 of the Family Code, the employer, or the
25 group administrator. In the case of children who are
26 eligible for medicaid, the State Department of Health
27 Services may also make the request.

28 (4) The plan cannot produce a written statement from
29 the employer stating that, prior to declining coverage,
30 the individual or the person through whom the individual
31 was eligible to be covered as a dependent was provided
32 with, and signed acknowledgment of, explicit written
33 notice in bold type specifying that failure to elect
34 coverage during the initial enrollment period permits the
35 plan to impose, at the time of the individual's later
36 decision to elect coverage, an exclusion from coverage for
37 a period of 12 months as well as a six-month preexisting
38 condition exclusion, unless the individual meets the
39 criteria specified in paragraph (1), (2), or (3).

1 (5) The individual is an employee or dependent who
2 meets the criteria described in paragraph (1) and was
3 under a COBRA continuation provision, and the
4 coverage under that provision has been exhausted. For
5 purposes of this section, the definition of “COBRA” set
6 forth in subdivision (e) of Section 1373.621 shall apply.

7 (6) The individual is a dependent of an enrolled
8 eligible employee who has lost or will lose his or her ~~no~~
9 ~~share-of-cost~~ *no-share-of-cost* Medi-Cal coverage and
10 requests enrollment within 30 days of notification of this
11 loss of coverage.

12 (c) “Preexisting condition provision” means a
13 contract provision that excludes coverage for charges or
14 expenses incurred during a specified period following the
15 enrollee’s effective date of coverage, as to a condition for
16 which medical advice, diagnosis, care, or treatment was
17 recommended or received during a specified period
18 immediately preceding the effective date of coverage.

19 (d) “Creditable coverage” means:

20 (1) Any individual or group policy, contract, or
21 program; that is written or administered by a disability
22 insurance company, nonprofit hospital service plan,
23 health care service plan, fraternal benefits society,
24 self-insured employer plan, or any other entity, in this
25 state or elsewhere, and that arranges or provides medical,
26 hospital, and surgical coverage not designed to
27 supplement other private or governmental plans. The
28 term includes continuation or conversion coverage but
29 does not include accident only, credit, coverage for onsite
30 medical clinics, disability income, Medicare supplement,
31 long-term care insurance, dental, vision, coverage issued
32 as a supplement to liability insurance, insurance arising
33 out of a workers’ compensation or similar law, automobile
34 medical payment insurance, or insurance under which
35 benefits are payable with or without regard to fault and
36 that is statutorily required to be contained in any liability
37 insurance policy or equivalent self-insurance.

38 (2) The federal Medicare program pursuant to Title
39 XVIII of the Social Security Act.

1 (3) The medicaid program pursuant to Title XIX of
2 the Social Security Act.

3 (4) Any other publicly sponsored program, provided
4 in this state or elsewhere, of medical, hospital, and
5 surgical care.

6 (5) ~~10—U.S.C.A.~~ Chapter 55 (commencing with Section
7 1071) *of Title 10 of the United States Code* (Civilian
8 Health and Medical Program of the Uniformed Services
9 (CHAMPUS)).

10 (6) A medical care program of the Indian Health
11 Service or of a tribal organization.

12 (7) A state health benefits risk pool.

13 (8) A health plan offered under ~~5—U.S.C.A.~~ Chapter 89
14 (commencing with Section 8901) *of Title 5 of the United*
15 *States Code* (Federal Employees Health Benefits
16 Program (FEHBP)).

17 (9) A public health plan as defined in federal
18 regulations authorized by Section 2701(c)(1)(I) of the
19 Public Health Service Act, as amended by Public Law
20 104-191, ~~the Health~~ (*Health Insurance Portability and*
21 *Accountability Act of 1996* 1996).

22 (10) A health benefit plan under Section 5(e) of the
23 Peace Corps Act (~~22—U.S.C.A.~~ *U.S.C. Sec. 2504(e)*).

24 (11) Any other creditable coverage as defined by
25 ~~subdivision~~ *subsection* (c) of Section 2701 of Title XXVII
26 of the federal Public Health Services Act (42 U.S.C. Sec.
27 300gg(c)).

28 (e) “Waivered condition” means a contract provision
29 that excludes coverage for charges or expenses incurred
30 during a specified period of time for one or more specific,
31 identified, medical conditions.

32 (f) “Affiliation period” means a period that, under the
33 terms of the health benefit plan, must expire before
34 health care services under the plan become effective.

35 SEC. 99. Section 1357.51 of the Health and Safety
36 Code is amended to read:

37 1357.51. (a) No plan contract that covers three or
38 more enrollees shall exclude coverage for any individual
39 on the basis of a preexisting condition provision for a
40 period greater than six months following the individual’s

1 effective date of coverage. Preexisting condition
2 provisions contained in plan contracts may relate only to
3 conditions for which medical advice, diagnosis, care, or
4 treatment, including use of prescription drugs, was
5 recommended or received from a licensed health
6 practitioner during the six months immediately
7 preceding the effective date of coverage.

8 (b) No plan contract that covers one or two individuals
9 shall exclude coverage on the basis of a preexisting
10 condition provision for a period greater than 12 months
11 following the individual's effective date of coverage, nor
12 shall *the plan* limit or exclude coverage for a specific
13 enrollee by type of illness, treatment, medical condition,
14 or accident, except for satisfaction of a preexisting
15 condition clause pursuant to this article. Preexisting
16 condition provisions contained in plan contracts may
17 relate only to conditions for which medical advice,
18 diagnosis, care, or treatment, including use of
19 prescription drugs, was recommended or received from
20 a licensed health practitioner during the 12 months
21 immediately preceding the effective date of coverage.

22 (c) A plan that does not utilize a preexisting condition
23 provision may impose a waiting or affiliation period not
24 to exceed 60 days, before the coverage issued subject to
25 this article shall become effective. During the waiting or
26 affiliation period, the plan is not required to provide
27 health care services and no premium shall be charged to
28 the subscriber or enrollee.

29 (d) A plan that does not utilize a preexisting condition
30 provision in plan contracts that cover one or two
31 individuals may impose a contract provision excluding
32 coverage for waived conditions. No plan may exclude
33 coverage on the basis of a waived condition for a period
34 greater than 12 months following the individual's
35 effective date of coverage. A waived condition
36 provision contained in plan contracts may relate only to
37 conditions for which medical advice, diagnosis, care, or
38 treatment, including use of prescription drugs, was
39 recommended or received from a licensed health



1 practitioner during the 12 months immediately
2 preceding the effective date of coverage.

3 (e) In determining whether a preexisting condition
4 provision, a waived condition provision, or a waiting or
5 affiliation period applies to any enrollee, a plan shall
6 credit the time the enrollee was covered under creditable
7 coverage, provided *that* the enrollee becomes eligible for
8 coverage under the succeeding plan contract within 62
9 days of termination of prior coverage, exclusive of any
10 waiting or affiliation period, and applies for coverage
11 under the succeeding plan within the applicable
12 enrollment period. A plan shall also credit any time *that*
13 an eligible employee must wait before enrolling in the
14 plan, including any postenrollment or employer-imposed
15 waiting or affiliation period.

16 However, if a person's employment has ended, the
17 availability of health coverage offered through
18 employment or sponsored by an employer has
19 terminated, or an employer's contribution toward health
20 coverage has terminated, a plan shall credit the time the
21 person was covered under creditable coverage if the
22 person becomes eligible for health coverage offered
23 through employment or sponsored by an employer
24 within 180 days, exclusive of any waiting or affiliation
25 period, and applies for coverage under the succeeding
26 plan contract within the applicable enrollment period.

27 (f) No plan shall exclude late enrollees from coverage
28 for more than 12 months from the date of the late
29 enrollee's application for coverage. No plan shall require
30 any premium or other periodic charge to be paid by or on
31 behalf of a late enrollee during the period of exclusion
32 from coverage permitted by this subdivision.

33 (g) A health care service plan issuing group coverage
34 may not impose a preexisting condition exclusion ~~to~~ upon
35 the following:

36 (1) ~~To a~~ A newborn individual, who, as of the last day
37 of the 30-day period beginning with the date of birth, has
38 applied for coverage through the employer-sponsored
39 plan.

1 (2) ~~To—~~^a A child who is adopted or placed for adoption
2 before attaining 18 years of age and who, as of the last day
3 of the 30-day period beginning with the date of adoption
4 or placement for adoption, is covered under creditable
5 coverage and applies for coverage through the
6 employer-sponsored plan. This provision shall not apply
7 if, for 63 continuous days, the child is not covered under
8 any creditable coverage.

9 (3) ~~To—~~^a A condition relating to benefits for pregnancy
10 or maternity care.

11 (h) An individual's period of creditable coverage shall
12 be certified pursuant to ~~subdivision~~ *subsection* (e) of
13 Section 2701 of Title XXVII of the federal Public Health
14 Services Act, ~~42~~ (42 U.S.C. Sec. ~~300gg(e)~~ *300gg(e)*).

15 SEC. 100. Section 1367.24 of the Health and Safety
16 Code is amended to read:

17 1367.24. (a) Every health care service plan that
18 provides prescription drug benefits shall maintain an
19 expeditious process by which prescribing providers may
20 obtain authorization for a medically necessary
21 nonformulary prescription drug. On or before July 1,
22 1999, every health care service plan that provides
23 prescription drug benefits shall file with the department
24 a description of its process, including timelines, for
25 responding to authorization requests for nonformulary
26 drugs. Any changes to this process shall be filed with the
27 department pursuant to Section 1352. Each plan shall
28 provide a written description of its most current process,
29 including timelines, to its prescribing providers. For
30 purposes of this section, a prescribing provider shall
31 include a provider authorized to write a prescription,
32 pursuant to subdivision (a) of Section 4040 of the Business
33 and Professions Code, to treat a medical condition of an
34 enrollee.

35 (b) Any plan that disapproves a request made
36 pursuant to subdivision (a) by a prescribing provider to
37 obtain authorization for a nonformulary drug shall
38 provide the reasons for the disapproval in a notice
39 provided to the enrollee. The notice shall indicate that
40 the enrollee may file a grievance with the plan if the

1 enrollee objects to the disapproval, including any
2 alternative drug or treatment offered by the plan. The
3 notice shall comply with subdivision (b) of Section
4 1368.02.

5 (c) The process described in subdivision (a) by which
6 prescribing providers may obtain authorization for
7 medically necessary nonformulary drugs shall not apply
8 to a nonformulary drug that has been prescribed for an
9 enrollee in conformance with the provisions of Section
10 1367.22.

11 (d) The process described in subdivision (a) by which
12 enrollees may obtain medically necessary nonformulary
13 drugs, including specified timelines for responding to
14 prescribing provider authorization requests, shall be
15 described in evidence of coverage and disclosure forms,
16 as required by subdivision (a) of Section 1363, issued on
17 or after July 1, 1999.

18 (e) Every health care service plan that provides
19 prescription drug benefits shall maintain, as part of its
20 books and records under Section 1381, all of the following
21 information, which shall be made available to the
22 commissioner upon request:

23 (1) The complete drug formulary or formularies of the
24 plan, if the plan maintains a formulary, including a list of
25 the prescription drugs on the formulary of the plan by
26 major therapeutic category with an indication of whether
27 any drugs are preferred over other drugs.

28 (2) Records developed by the pharmacy and
29 therapeutic committee of the plan, or by others
30 responsible for developing, modifying, and overseeing
31 formularies, including medical groups, individual
32 practice associations, and contracting pharmaceutical
33 benefit management companies, used to guide the drugs
34 prescribed for the enrollees of the plan, that fully describe
35 the reasoning behind formulary decisions.

36 (3) Any plan arrangements with prescribing
37 providers, medical groups, individual practice
38 associations, pharmacists, contracting pharmaceutical
39 benefit management companies, or other entities that are
40 associated with activities of the plan to encourage

1 formulary compliance or otherwise manage prescription
2 drug benefits.

3 (f) If a plan provides prescription drug benefits, the
4 department shall, as part of its periodic onsite medical
5 survey of each plan undertaken pursuant to Section 1380,
6 review the performance of the plan in providing those
7 benefits, including, but not limited to, a review of the
8 procedures and information maintained pursuant to this
9 section, and describe the performance of the plan as part
10 of its report issued pursuant to Section 1380.

11 (g) The commissioner shall not publicly disclose any
12 information reviewed pursuant to this section that is
13 determined by the commissioner to be confidential
14 pursuant to state law.

15 (h) Nothing in this section shall be construed to
16 restrict or impair the application of any other provision
17 of this chapter, including, but not limited to, Section 1367,
18 which includes among its requirements that a health care
19 service plan furnish services in a manner providing
20 continuity of care and demonstrate that medical
21 decisions are rendered by qualified medical providers
22 unhindered by fiscal and administrative management.
23 ~~Subdivision (e) of Section 1367.24, which establishes an~~
24 ~~exemption if a drug has been prescribed in conformance~~
25 ~~with Section 1367.22, shall have no effect unless Section~~
26 ~~1367.22 of the Health and Safety Code, as added by~~
27 ~~Assembly Bill 974 of the 1997-98 Regular Session, takes~~
28 ~~effect on or before July 1, 1999.~~

29 SEC. 101. Section 1442.5 of the Health and Safety
30 Code is amended to read:

31 1442.5. (a) Prior to (1) closing a ~~county facility~~, (2)
32 eliminating or reducing the level of medical services
33 provided by, or ~~prior to~~ (3) the leasing, selling, or transfer
34 of management of, a *county facility*, the board shall
35 provide public notice, including notice posted at the
36 entrance to all county health care facilities, of public
37 hearings to be held by the board prior to ~~their~~ *its* decision
38 to proceed. The notice shall be posted not less than 14
39 days prior to the public hearings. The notice shall contain
40 a list of the proposed reductions or changes, by facility

1 and service. The notice shall include the amount and type
2 of each proposed change, the expected savings, and the
3 number of persons affected.

4 (b) Notwithstanding the board's closing of ~~a county~~
5 ~~facility~~, the elimination of or reduction in the level of
6 services provided *by*, or the leasing, selling, or transfer of
7 management of, a county facility subsequent to January
8 1, 1975, the county shall ~~provide for the fulfillment of~~
9 *fulfill* its duty to provide care to all indigent people, either
10 directly through county facilities or indirectly through
11 alternative means.

12 ~~(a)~~

13 (1) Where ~~this~~ *the* county duty is fulfilled by a
14 contractual arrangement with a private facility or
15 individual, the facility or individual shall assume the
16 county's full obligation to provide care to those who
17 cannot afford it, and make their services available to
18 Medi-Cal and Medicare recipients.

19 ~~(b)~~

20 (2) Where ~~this~~ *the* county duty is fulfilled by
21 alternative means, the facility or individual providing
22 services shall be in compliance with Sections 441.18 and
23 1277.

24 ~~(c)~~

25 (3) The board shall designate an agency to provide: a
26 24-hour information service ~~which~~ *that* can give eligible
27 people immediate information ~~as to~~ *on* the available
28 services and access to them, and an agency to receive and
29 respond to complaints from people eligible for services
30 under this chapter. The designated agency may be the
31 agency ~~which~~ *that* operates the facility. This subdivision
32 ~~shall apply~~ *applies* only in instances in which there is (1)
33 a closing of ~~a county facility~~, (2) an elimination or
34 reduction in the level of services provided *by*, or (3) the
35 leasing, selling, or transfer of ~~such~~, a county facility.

36 ~~(d)~~

37 (4) The board shall arrange for all facilities or
38 individuals contracting to provide services to indigent
39 people to be listed in the local telephone directory under
40 county listings, and shall specify therein that ~~such~~ *the*

1 facilities or individuals fulfill the obligations of county
2 facilities.

3 ~~The provisions of Section~~

4 (5) Section 25371 of the Government Code ~~do~~ does not
5 relieve the county of the obligation to comply with ~~the~~
6 ~~provisions of this section.~~

7 SEC. 102. Section 1502.6 of the Health and Safety
8 Code is amended to read:

9 1502.6. The department shall deny a private adoption
10 agency a license, or revoke an existing private adoption
11 agency license, unless the applicant or licensee
12 demonstrates that ~~they~~ it currently and continuously
13 ~~employ~~ employs either an executive director or a
14 supervisor who has had at least five years of full-time
15 social work employment in the field of child welfare as
16 described in Chapter 5 (commencing with Section 16500)
17 of Part 4 of Division 9 of the Welfare and Institutions Code
18 or Division 13 (commencing with Section 8500) of the
19 Family Code, two years of which shall have been spent
20 performing adoption social work services in either the
21 department or a licensed California adoption agency.

22 SEC. 103. Section 1522 of the Health and Safety Code
23 is amended to read:

24 1522. The Legislature recognizes the need to
25 generate timely and accurate positive fingerprint
26 identification of applicants as a condition of issuing
27 licenses, permits, or certificates of approval for persons to
28 operate or provide direct care services in a community
29 care facility, foster family home, or a certified family
30 home. Therefore, the Legislature supports the use of ~~the~~
31 fingerprint live-scan technology, as identified in the
32 long-range plan of the Department of Justice for fully
33 automating the processing of fingerprints and other data
34 by the year 1999, otherwise known as the California
35 Crime Information Intelligence System (CAL-CII), to be
36 used for applicant fingerprints. It is the intent of the
37 Legislature in enacting this section to require the
38 fingerprints of those individuals whose contact with
39 community care clients may pose a risk to the clients'
40 health and safety.

1 (a) Before issuing a license or special permit to any
2 person or persons to operate or manage a community
3 care facility, the State Department of Social Services shall
4 secure from an appropriate law enforcement agency a
5 criminal record to determine whether the applicant or
6 any other person specified in subdivision (b) has ever
7 been convicted of a crime other than a minor traffic
8 violation or arrested for any crime specified in Section 290
9 of the Penal Code, for violating Section 245 or 273.5,
10 subdivision (b) of Section 273a or, prior to January 1, 1994,
11 paragraph (2) of Section 273a of the Penal Code, or for
12 any crime for which the department cannot grant an
13 exemption if the person was convicted and the person has
14 not been exonerated. That criminal history information
15 shall include the full criminal record; of any of those
16 persons, and subsequent arrest information pursuant to
17 Section 11105.2 of the Penal Code. No fee shall be charged
18 by the Department of Justice or the State Department of
19 Social Services for the fingerprinting of an applicant for
20 a license or special permit to operate a facility providing
21 nonmedical board, room, and care for six or ~~less~~ *fewer*
22 children or for obtaining a criminal record of the
23 applicant pursuant to this section. The following shall
24 apply to the criminal record information:

25 (1) If the State Department of Social Services finds
26 that the applicant, or any other person specified in
27 subdivision (b), has been convicted of a crime other than
28 a minor traffic violation, the application shall be denied,
29 unless the director grants an exemption pursuant to
30 subdivision (g).

31 (2) If the State Department of Social Services finds
32 that the applicant, or any *other* person specified in
33 subdivision (b), is awaiting trial for a crime other than a
34 minor traffic violation, the State Department of Social
35 Services shall cease processing the application until the
36 conclusion of the trial.

37 (3) If no criminal record information has been
38 recorded, the Department of Justice shall provide the
39 applicant and the State Department of Social Services
40 with a statement of that fact.

(4) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (g).

(b) In addition to the applicant, this section shall be applicable to criminal convictions of the following persons:

(1) Adults responsible for administration or direct supervision of staff.

(2) Any person, other than a client, residing in the facility.

(3) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who falls under this exception shall provide one copy of his or her certification, prior to providing care, to the adult community care facility. The facility shall maintain the copy of the certification on file as long as care is being provided by the certified nurse assistant or certified home health aide at the facility. Nothing in this paragraph restricts the right of the department to exclude a certified nurse assistant or certified home health aide from a licensed community care facility pursuant to Section 1558.

(4) Any staff person or employee who has frequent and routine contact with the clients. In determining who has frequent contact, any volunteer who is in the facility shall be exempt unless the volunteer is used to replace or supplement staff in providing direct care and supervision of clients. In determining who has routine contact, staff and employees under direct onsite supervision and who

1 are not providing direct care and supervision or who have
2 only occasional or intermittent contact with clients shall
3 be exempt.

4 (5) If the applicant is a firm, partnership, association,
5 or corporation, the chief executive officer or other person
6 serving in like capacity.

7 (6) Additional officers of the governing body of the
8 applicant, or other persons with a financial interest in the
9 applicant, as determined necessary by the department by
10 regulation. The criteria used in the development of these
11 regulations shall be based on the person's capability to
12 exercise substantial influence over the operation of the
13 facility.

14 (c) (1) Subsequent to initial licensure, any person
15 specified in subdivision (b) and not exempted from
16 fingerprinting shall, as a condition to employment,
17 residence, or presence in a community care facility, be
18 fingerprinted and sign a declaration under penalty of
19 perjury regarding any prior criminal convictions. The
20 licensee shall submit these fingerprints to the
21 Department of Justice not later than four calendar days
22 following employment, residence, or initial presence in
23 the community care facility. These fingerprints shall be
24 on a card provided by the State Department of Social
25 Services for the purpose of obtaining a permanent set of
26 fingerprints. Fingerprints not submitted to the
27 Department of Justice, as required in this section, shall
28 result in the citation of a deficiency and the fingerprints
29 shall then be submitted to the State Department of Social
30 Services for processing. Upon request of the licensee, who
31 shall enclose a self-addressed stamped postcard for this
32 purpose, the Department of Justice shall verify receipt of
33 the fingerprints.

34 (2) Within 30 calendar days of the receipt of the
35 fingerprints, the Department of Justice shall notify the
36 State Department of Social Services of the criminal
37 record information, as provided for in subdivision (a). If
38 no criminal record information has been recorded, the
39 Department of Justice shall provide the licensee and the
40 State Department of Social Services with a statement of

1 that fact within 15 calendar days of receipt of the
2 fingerprints. If new fingerprints are required for
3 processing, the Department of Justice shall, within 15
4 calendar days from the date of receipt of the fingerprints,
5 notify the licensee that the fingerprints were illegible.

6 (3) Except for persons specified in paragraph (2) of
7 subdivision (b), the licensee shall endeavor to ascertain
8 the previous employment history of persons required to
9 be fingerprinted under this subdivision. If it is
10 determined by the State Department of Social Services,
11 on the basis of the fingerprints submitted to the
12 Department of Justice, that the person has been
13 convicted of, or is awaiting trial for, a sex offense against
14 a minor, or has been convicted for an offense specified in
15 Section 243.4, 273a, or 273d or subdivision (a) or (b) of
16 Section 368 of the Penal Code, or a felony, the State
17 Department of Social Services shall notify the licensee *of*
18 *its obligation* to act immediately to terminate the person's
19 employment, remove the person from the community
20 care facility, or bar the person from entering the
21 community care facility. The State Department of Social
22 Services may subsequently grant an exemption pursuant
23 to subdivision (g). If the conviction or arrest was for
24 another crime, except a minor traffic violation, the
25 licensee shall, upon notification by the State Department
26 of Social Services, act immediately to either (1) terminate
27 the person's employment, remove the person from the
28 community care facility, or bar the person from entering
29 the community care facility; or (2) seek an exemption
30 pursuant to subdivision (g). The State Department of
31 Social Services shall determine ~~if~~ *whether* the person
32 ~~shall~~ *will* be allowed to remain in the facility until a
33 decision on the exemption is rendered. A licensee's
34 failure to comply with the department's prohibition of
35 employment, contact with clients, or presence in the
36 facility as required by this paragraph shall be grounds for
37 disciplining the licensee pursuant to Section 1550.

38 (4) The department may issue an exemption on its
39 own motion pursuant to subdivision (g) if the person's
40 criminal history indicates that the person is of good

1 character based on the age, seriousness, and frequency of
2 the conviction or convictions. The department, in
3 consultation with interested parties, shall develop
4 ~~regulation~~ *regulations* to establish the criteria to grant an
5 exemption pursuant to this paragraph.

6 (5) Concurrently with notifying the licensee pursuant
7 to paragraph (3), the department shall notify the affected
8 individual of his or her right to seek an exemption
9 pursuant to subdivision (g). The individual may seek an
10 exemption only if the licensee terminates the person's
11 employment or removes the person from the facility after
12 receiving notice from the department pursuant to
13 paragraph (3).

14 (d) (1) Before issuing a license, special permit, or
15 certificate of approval to any person or persons to operate
16 or manage a foster family home or certified family home
17 as described in Section 1506, the State Department of
18 Social Services or other approving authority shall secure
19 from an appropriate law enforcement agency a criminal
20 record to determine whether the applicant or any person
21 specified in subdivision (b) has ever been convicted of a
22 crime other than a minor traffic violation or arrested for
23 any crime specified in Section 290 of the Penal Code or
24 arrested for violating Section 245 or 273.5, subdivision (b)
25 of Section 273a or, prior to January 1, 1994, paragraph (2)
26 of Section 273a of the Penal Code, or for any crime for
27 which the department cannot grant an exemption if the
28 person was convicted and ~~the person~~ has not been
29 exonerated. That criminal history information shall
30 include the full criminal record, if any, of those persons.
31 No fee shall be charged by the Department of Justice or
32 the State Department of Social Services for the
33 fingerprinting of an applicant for a license, special
34 permit, or certificate of approval described in this
35 subdivision. The record, if any, shall be taken into
36 consideration when evaluating a prospective applicant.
37 The following shall apply to the criminal record
38 information:

39 (A) If the applicant or other persons specified in
40 subdivision (b) have convictions that would make the

1 applicant's home unfit as a foster family home or a
2 certified family home, the license, special permit, or
3 certificate of approval shall be denied.

4 (B) If the State Department of Social Services finds
5 that the applicant, or any person specified in subdivision
6 (b) is awaiting trial for a crime other than a minor traffic
7 violation, the State Department of Social Services or
8 other approving authority shall cease processing the
9 application until the conclusion of the trial.

10 (C) For the purposes of this subdivision, a criminal
11 record clearance provided under Section 8712 of the
12 Family Code may be used by the department or other
13 approving agency.

14 (2) Any person specified in this subdivision shall, as a
15 part of the application, be fingerprinted and sign a
16 declaration under penalty of perjury regarding any prior
17 criminal convictions or arrests for any crime against a
18 child, spousal or cohabitant abuse, or; any crime for which
19 the department cannot grant an exemption if the person
20 was convicted and shall submit these fingerprints to the
21 licensing agency or other approving authority.

22 (3) The foster family agency shall obtain fingerprints
23 from certified home applicants and from persons
24 specified in subdivision (b) and shall submit them
25 directly to the Department of Justice. Within five
26 working days of the receipt of the criminal record or
27 information regarding criminal convictions from the
28 Department of Justice, the department shall notify the
29 applicant of any criminal arrests or convictions. If no
30 arrests or convictions are recorded, the Department of
31 Justice shall provide the foster family agency with a
32 statement of that fact concurrent with providing the
33 information to the State Department of Social Services.

34 (4) If the State Department of Social Services finds
35 that the applicant, or any other person specified in
36 subdivision (b), has been convicted of a crime other than
37 a minor traffic violation, the application shall be denied,
38 unless the director grants an exemption pursuant to
39 subdivision (g).

1 (5) If the State Department of Social Services finds
2 after licensure or the granting of the certificate of
3 approval that the licensee, certified foster parent, or any
4 other person specified in paragraph (2) of subdivision
5 (b), has been convicted of a crime other than a minor
6 traffic violation, the license or certificate of approval may
7 be revoked by the department or the foster family
8 agency, whichever is applicable, unless the director
9 grants an exemption pursuant to subdivision (g). A
10 licensee's failure to comply with the department's
11 prohibition of employment, contact with clients, or
12 presence in the facility as required by paragraph (3) of
13 subdivision (c) shall be grounds for disciplining the
14 licensee pursuant to Section 1550.

15 (e) The State Department of Social Services shall not
16 use a record of arrest to deny, revoke, or terminate any
17 application, license, employment, or residence unless the
18 department investigates the incident and secures
19 evidence, whether or not related to the incident of arrest,
20 that is admissible in an administrative hearing to establish
21 conduct by the person that may pose a risk to the health
22 and safety of any person who is or may become a client.
23 The State Department of Social Services is authorized to
24 obtain any arrest or conviction records or reports from
25 any law enforcement agency as necessary to the
26 performance of its duties to inspect, license, and
27 investigate community care facilities and individuals
28 associated with a community care facility.

29 (f) For purposes of this section or any other provision
30 of this chapter, a conviction means a plea or verdict of
31 guilty or a conviction following a plea of nolo contendere.
32 Any action ~~which~~ *that* the State Department of Social
33 Services is permitted to take following the establishment
34 of a conviction may be taken when the time for appeal has
35 elapsed, or *when* the judgment of conviction has been
36 affirmed on appeal, or when an order granting probation
37 is made suspending the imposition of sentence,
38 notwithstanding a subsequent order pursuant to Sections
39 1203.4 and 1203.4a of the Penal Code permitting the
40 person to withdraw his or her plea of guilty and to enter

1 a plea of not guilty, or setting aside the verdict of guilty,
2 or dismissing the accusation, information, or indictment.
3 For purposes of this section or any other provision of this
4 chapter, the record of a conviction, or a copy thereof
5 certified by the clerk of the court or by a judge of the
6 court in which the conviction occurred, shall be
7 conclusive evidence of the conviction. For purposes of
8 this section or any other provision of this chapter, the
9 arrest disposition report certified by the Department of
10 Justice, or documents admissible in a criminal action
11 pursuant to Section 969b of the Penal Code, shall be prima
12 facie evidence of the conviction, notwithstanding any
13 other provision of law prohibiting the admission of these
14 documents in a civil or administrative action.

15 (g) (1) After review of the record, the director may
16 grant an exemption from disqualification for a license or
17 special permit as specified in paragraphs (1) and (4) of
18 subdivision (a), or for a license, special permit, or
19 certificate of approval as specified in paragraphs (4) and
20 (5) of subdivision (d), or for employment, residence, or
21 presence in a community care facility as specified in
22 paragraphs (3), (4), and (5) of subdivision (c), if the
23 director has substantial and convincing evidence to
24 support a reasonable belief that the applicant and the
25 person convicted of the crime, if other than the applicant,
26 are of such good character as to justify issuance of the
27 license or special permit or granting an exemption for
28 purposes of subdivision (c). Except as otherwise provided
29 in this subdivision, no exemption shall be granted
30 pursuant to this subdivision if the conviction was for an
31 offense specified in Section 220, 243.4, or 264.1,
32 subdivision (a) of Section 273a or, prior to January 1, 1994,
33 paragraph (1) of Section 273a, Section 273d, 288, or 289,
34 subdivision (a) of Section 290, or subdivision (a) or (b) of
35 Section 368 of the Penal Code, or was a conviction of
36 another crime against an individual specified in
37 subdivision (c) of Section 667.5 of the Penal Code. The
38 director may grant an exemption if the employee or
39 prospective employee, who was convicted of a crime
40 against an individual prescribed in paragraph (1), (2),

1 (7), or (8) of subdivision (c) of Section 667.5 of the Penal
2 Code, has been rehabilitated as provided in Section
3 4852.03 of the Penal Code, has maintained the conduct
4 required in Section 4852.05 of the Penal Code for at least
5 10 years, and has the recommendation of the district
6 attorney representing the employee's county of
7 residence, or if the employee or prospective employee
8 has received a certificate of rehabilitation pursuant to
9 Chapter 3.5 (commencing with Section 4852.01) of Title
10 6 of Part 3 of the Penal Code.

11 (2) The department shall not prohibit a person from
12 being employed or having contact with clients in a facility
13 on the basis of a denied criminal record exemption
14 request or arrest information unless the department
15 complies with the requirements of Section 1558.

16 (h) (1) For purposes of compliance with this section,
17 the department may permit an individual to transfer a
18 current criminal records clearance, as defined in
19 subdivision (a), from one facility to another, as long as the
20 criminal record clearance has been processed through a
21 state licensing district office, and is being transferred to
22 another state licensing district office.

23 (2) The State Department of Social Services shall hold
24 criminal record clearances in its active files for a
25 minimum of two years after an employee is no longer
26 employed at a licensed facility in order for the criminal
27 record clearance to be transferred.

28 (i) The full criminal record obtained for purposes of
29 this section may be used by the department or by a
30 licensed adoption agency as a clearance required for
31 adoption purposes.

32 (j) If a licensee or facility is required by law to deny
33 employment or to terminate employment of any
34 employee based on written notification from the state
35 department that the employee has a prior criminal
36 conviction or is determined unsuitable for employment
37 under Section 1558, the licensee or facility shall not incur
38 civil liability or unemployment insurance liability as a
39 result of that denial or termination.

1 (k) (1) In order to expedite the current criminal
2 record clearance and fingerprint process of the
3 Department of Justice pursuant to subdivisions (a) and
4 (c), the Department of Justice shall complete work on all
5 of its current backlog of criminal records clearances for
6 community care facilities licensed by the State
7 Department of Social Services by July 1, 1995.

8 (2) Effective January 1, 1995, the Department of
9 Justice shall complete all new requests for criminal record
10 clearances for community care facilities within 30 days of
11 receipt.

12 (3) The Department of Justice shall coordinate with
13 the State Department of Social Services to establish and
14 implement an automated live-scan processing system for
15 fingerprints in two district offices of the Community Care
16 Licensing Division of the State Department of Social
17 Services by July 1, 1995. These live-scan processing units
18 shall be connected to the main system at the Department
19 of Justice by July 1, 1996, and shall become part of that
20 department's pilot project in accordance with its
21 long-range plan. The State Department of Social Services
22 may charge a fee not to exceed five dollars (\$5) or the
23 actual cost of processing a set of live-scan fingerprints.

24 (4) The Department of Justice shall provide a report
25 to the Assembly Human Services Committee and to the
26 Senate Health and Human Services Committee by July
27 15, 1995, regarding the completion of backlogged
28 criminal record clearance requests pursuant to
29 paragraph (1) and the progress on implementing the
30 automated live-scan processing system in the two district
31 offices pursuant to paragraph (3). The Department of
32 Justice shall provide a report to the Assembly Human
33 Services Committee and to the Senate Health and
34 Human Services Committee by April 15, 1996, regarding
35 the progress of the implementation of the statewide
36 CAL-CII system; the number of requests for criminal
37 clearances received pursuant to this section during the
38 previous year; the number of criminal record clearances
39 requested and completed pursuant to this section within
40 a 17-day "expedite" period or within the 30-day period

1 required by paragraph (2);, and the number of requests
2 and reasons for delays beyond the 30-day period.

3 SEC. 104. Section 1746 of the Health and Safety Code
4 is amended to read:

5 1746. ~~As used in~~ *For the purposes of* this chapter, the
6 following definitions ~~shall~~ apply:

7 (a) “Bereavement services” means those services
8 available to the surviving family members for a period of
9 at least one year after the death of the patient. ~~These~~
10 ~~services shall include,~~ *including* an assessment of the
11 needs of the bereaved family; and the development of a
12 care plan that meets these needs, both prior to; and
13 following the death of the patient.

14 (b) “Hospice” means a specialized form of
15 interdisciplinary health care that is designed to provide
16 palliative care, alleviate the physical, emotional, social,
17 and spiritual discomforts of an individual who is
18 experiencing the last phases of life due to the existence of
19 a terminal disease, ~~to~~ *and* provide supportive care to the
20 primary care giver and the family of the hospice patient,
21 and ~~which~~ *that* meets all of the following criteria:

22 (1) Considers the patient and the patient’s family, in
23 addition to the patient, as the unit of care.

24 (2) Utilizes an interdisciplinary team to assess the
25 physical, medical, psychological, social, and spiritual
26 needs of the patient and the patient’s family.

27 (3) Requires the interdisciplinary team to develop an
28 overall plan of care and to provide coordinated care
29 ~~which~~ *that* emphasizes supportive services, including,
30 but not limited to, home care, pain control, and limited
31 inpatient services. Limited inpatient services are
32 intended to ensure both continuity of care and
33 appropriateness of services for those patients who cannot
34 be managed at home because of acute complications or
35 the temporary absence of a capable primary care giver.

36 (4) Provides for the palliative medical treatment of
37 pain and other symptoms associated with a terminal
38 disease, but does not provide for efforts to cure the
39 disease.

1 (5) Provides for bereavement services following death
2 to assist the family ~~to cope~~ *in coping* with social and
3 emotional needs associated with the death of the patient.

4 (6) Actively utilizes volunteers in the delivery of
5 hospice services.

6 (7) To the extent appropriate, based on the medical
7 needs of the patient, provides services in the patient's
8 home or primary place of residence.

9 (c) "Inpatient care arrangements" means arranging
10 for those short inpatient stays that may become necessary
11 to manage acute symptoms or ~~due to~~ *because of* the
12 temporary absence, or need for respite, of a capable
13 primary caregiver. The hospice shall arrange for these
14 stays, ensuring both continuity of care and the
15 appropriateness of services.

16 (d) "Medical direction" means those services
17 provided by a licensed physician and surgeon who is
18 charged with the responsibility of acting as a consultant
19 to the interdisciplinary team, a consultant to the patient's
20 attending physician and surgeon, as requested, with
21 regard to pain and symptom management, and *a liaison*
22 with physicians and surgeons in the community.

23 (e) "An interdisciplinary team" means the hospice
24 care team that includes, but is not limited to, the patient
25 and patient's family, a physician and surgeon, a registered
26 nurse, a social worker, a volunteer, and a spiritual
27 caregiver. The team shall be coordinated by a registered
28 nurse and shall be under medical direction. The team
29 shall meet regularly to develop and maintain an
30 appropriate plan of care.

31 (f) "Plan of care" means a written plan developed by
32 the attending physician and surgeon, the medical
33 director or physician and surgeon designee, and the
34 interdisciplinary team that addresses the needs of a
35 patient and family admitted to the hospice program. The
36 hospice shall retain overall responsibility for the
37 development and maintenance of the plan of care and
38 quality of services delivered.

39 (g) "Skilled nursing services" means nursing services
40 provided by or under the supervision of a registered

1 nurse under a plan of care developed by the
2 interdisciplinary team and the patient's physician and
3 surgeon to a patient and his or her family that pertain to
4 the palliative, supportive services required by patients
5 with a terminal illness. Skilled nursing services include,
6 but are not limited to, patient assessment, evaluation and
7 case management of the medical nursing needs of the
8 patient, the performance of prescribed medical
9 treatment for pain and symptom control, the provision of
10 emotional support to both the patient and his or her
11 family, and the instruction of caregivers in providing
12 personal care to the patient. Skilled nursing services shall
13 provide for the continuity of services for the patient and
14 his or her family. Skilled nursing services shall be
15 available on a 24-hour on-call basis.

16 (h) "Social service/counseling services" means those
17 counseling and spiritual care services that assist the
18 patient and his or her family to minimize stresses and
19 problems that arise from social, economic, psychological,
20 or spiritual needs by utilizing appropriate community
21 resources, and maximize positive aspects and
22 opportunities for growth.

23 (i) "Terminal disease" or "terminal illness" means a
24 medical condition resulting in a prognosis of life of one
25 year or less, if the disease follows its natural course.

26 (j) "Volunteer services" means those services
27 provided by trained hospice volunteers who have agreed
28 to provide service under the direction of a hospice staff
29 member who has been designated by the hospice to
30 provide direction to hospice volunteers. Hospice
31 volunteers may be used to provide support and
32 companionship to the patient and his or her family during
33 the remaining days of the patient's life and to the
34 surviving family following the patient's death.

35 (k) "Multiple location" means a location or site from
36 which a hospice makes available basic hospice services
37 within the service area of the parent agency. A multiple
38 location shares administration, supervision, policies and
39 procedures, and services with the parent agency in a

1 manner that renders it unnecessary for the site to
2 independently meet the licensing requirements.

3 (l) “Home health aide” has the same meaning as set
4 forth in subdivision (c) of Section 1727.

5 (m) “Home health aide services” means those services
6 ~~as set forth~~ *described* in subdivision (d) of Section 1727
7 ~~provided that provide~~ for the personal care of the
8 terminally ill patient and the performance of related tasks
9 in the patient’s home in accordance with the plan of care
10 in order to increase the level of comfort and to maintain
11 personal hygiene and a safe, healthy environment for the
12 patient.

13 (n) “Parent agency” means the part of the hospice
14 that is licensed pursuant to this chapter; and *that* develops
15 and maintains administrative controls of multiple
16 locations. All services provided by the multiple location
17 and parent agency are the responsibility of the parent
18 agency.

19 SEC. 105. Section 1771.9 of the Health and Safety
20 Code is amended to read:

21 1771.9. (a) (1) The Legislature finds and declares all
22 of the following:

23 (A) The residents of continuing care retirement
24 communities have a unique and valuable perspective on
25 the operations of and services provided in the community
26 in which they live.

27 (B) Resident input into decisions made by the
28 provider is an important factor in creating an
29 environment of cooperation, reducing conflict, and
30 ensuring timely response *to* and resolution ~~to~~ *of* issues
31 that may arise.

32 (C) Continuing care retirement communities are
33 strengthened when residents know that their views are
34 heard and respected.

35 (2) The Legislature encourages continuing care
36 retirement communities to exceed the minimum
37 resident participation requirements established by this
38 section by, among other things, the following:

39 (A) Encouraging residents to form a resident council,
40 *and* assisting the residents, resident council, and resident

1 association to keep informed about the operation of the
2 community.

3 (B) Encouraging residents of a community or their
4 elected representatives to select residents to participate
5 as board members of the provider.

6 (C) Quickly and fairly resolving any dispute, claim, or
7 grievance arising between a resident and the community.

8 (b) The governing body of a provider, or the
9 designated representative of the provider, shall hold, at
10 a minimum, semiannual meetings with the residents of
11 the continuing care retirement community, or a
12 committee of residents, for the purpose of the free
13 discussion of subjects including, but not limited to,
14 income, expenditures, and financial trends and issues as
15 they apply to the community and proposed changes in
16 policies, programs, and services. Nothing in this section
17 precludes a provider from taking action or making a
18 decision at any time, without regard to the meetings
19 required under this subdivision.

20 (c) At least 30 days prior to the implementation of any
21 increase in the monthly care fee, the designated
22 representative of the provider shall convene a meeting,
23 to which all residents shall be invited, for the purpose of
24 discussing the reasons for the increase, the basis for
25 determining the amount of the increase, and the data
26 used for calculating the increase. This meeting may
27 coincide with the semiannual meetings provided for in
28 subdivision (b).

29 (d) Residents shall be provided at least 14 days'
30 advance notice of each meeting provided for in
31 subdivisions (b) and (c). The notice of, and the agenda
32 for, the meeting shall be posted in a conspicuous place in
33 the community at least 14 days prior to the meeting. The
34 agenda and accompanying materials shall be available to
35 residents of the community upon request.

36 (e) (1) The governing body of a provider that is not
37 part of a multifacility organization with more than one
38 continuing care retirement community in the state shall
39 accept at least one resident of the continuing care
40 retirement community it operates to participate as a

1 nonvoting resident representative to the provider's
2 governing body.

3 (2) In a multifacility organization having more than
4 one continuing care retirement community in the state,
5 the governing body of the multifacility organization shall
6 elect either (A) to have at least one nonvoting resident
7 representative to the provider's governing body for each
8 California-based continuing care retirement community
9 *that* the provider operates or (B) to have a
10 resident-elected committee composed of representatives
11 of the residents of each California-based continuing care
12 retirement community that the provider operates select
13 or nominate at least one nonvoting resident
14 representative to the provider's governing body for every
15 three California-based continuing care retirement
16 communities, or fraction thereof, that the provider
17 operates.

18 (f) (1) In order to encourage innovative and
19 alternative models of resident involvement, a resident
20 selected pursuant to subdivision (e) to participate as a
21 resident representative to the provider's governing body
22 may, at the option of the resident council or association,
23 be selected in any one of the following ways:

24 (A) By a majority vote of the resident council or
25 resident association of a provider or by a majority vote of
26 a resident-elected committee of residents of a
27 multifacility organization.

28 (B) If no resident council or resident association exists,
29 any resident may organize a meeting of the majority of
30 the residents of the community to select or nominate
31 residents to represent them before the governing body.

32 (C) Any other method designated by the resident
33 council or resident association.

34 (2) The residents' council, association, or organizing
35 resident, or in the case of a multifacility organization, the
36 resident-elected committee of residents, shall give
37 residents of the community at least 30 days' advance
38 notice of the meeting to select a resident representative
39 and shall post the notice in a conspicuous place at the
40 community.



(g) Except as provided in subdivision (h), the resident representative shall receive the same notice of board meetings, board packets, minutes, and other materials as members and shall be permitted to attend, speak, and participate in all meetings of the board.

(h) Notwithstanding subdivision (g), the governing body may exclude resident representatives from its executive sessions and from receiving board materials to be discussed during executive ~~session~~ sessions. However, resident representatives shall be included in executive sessions and shall receive all board materials to be discussed during executive sessions related to discussions of the annual budgets, increases in monthly care fees, indebtedness, and expansion of new and existing facilities.

(i) The provider shall pay all reasonable travel costs for the resident representative.

(j) The provider shall disclose *to prospective tenants*, in writing, the extent of resident involvement with the board ~~to prospective residents~~.

~~(k) Nothing in this~~ This section ~~shall~~ does not prohibit a provider from exceeding the minimum resident participation requirements of this section by, for example, having more resident meetings or more resident representatives to the board than required or by having one or more residents on the provider's governing body who are selected with the active involvement of residents.

(l) On or before January 1, 2001, the Continuing Care Contracts Committee of the department established pursuant to Section 1777 shall evaluate and report to the Legislature on the implementation of this section.

SEC. 106. Section 1797.191 of the Health and Safety Code is amended to read:

1797.191. (a) The authority shall establish minimum standards for the training in pediatric first aid, pediatric cardiopulmonary resuscitation (CPR), and preventive health practices required by Section 1596.866.

(b) (1) The authority shall establish a process for the ongoing review and approval of training programs in

1 pediatric first aid, pediatric CPR, and preventive health
2 practices as specified in paragraph (2) of subdivision (a)
3 of Section 1596.866 to ensure that those programs meet
4 the minimum standards established pursuant to
5 subdivision (a). The authority shall charge fees equal to
6 its costs incurred for the pediatric first aid and *pediatric*
7 CPR training standards program and for the ongoing
8 review and approval of these programs.

9 (2) The authority shall establish, in consultation with
10 experts in pediatric first aid, pediatric CPR, and
11 preventive health practices, a process to ensure the
12 quality of the training programs, including, but not
13 limited to, a method for assessing the appropriateness of
14 the courses and the qualifications of the instructors.

15 (c) (1) The authority may charge a fee equal to its
16 costs incurred for the preventive health practices
17 program and for the initial review and approval and
18 renewal of approval of the program.

19 (2) If the authority chooses to establish a fee process
20 based on the use of course completion cards for the
21 preventive health practices program, the cost shall not
22 exceed seven dollars (\$7) per card for each training
23 participant until January 1, 2001, at which time the
24 authority may evaluate its administrative costs. After
25 evaluation of the costs, the authority may establish a new
26 fee scale for the cards so that revenue does not exceed the
27 costs of the ongoing review and approval of the
28 preventive health practices training.

29 (d) For the purposes of this section, ~~training programs~~
30 ~~mean~~ “*training programs*” means programs that apply
31 for approval by the authority to provide the training in
32 pediatric first aid, pediatric CPR, or preventive health
33 practices as specified in paragraph (2) of subdivision (a)
34 of Section 1596.866. Training programs include all
35 affiliated programs that also provide any of the
36 authority-approved training required by this division.
37 ~~Affiliated programs are~~ “*Affiliated programs*” means
38 programs that are overseen by persons or organizations
39 that have an authority-approved training program in
40 pediatric first aid, pediatric CPR, or preventive health

practices. Affiliated programs also include programs that have purchased an authority-approved training program in pediatric first aid, pediatric CPR, or preventive health practices. Training programs and their affiliated programs shall comply with ~~the provisions of~~ this division and with the regulations adopted by the authority pertaining to training programs in pediatric first aid, pediatric CPR, or preventive health practices.

(e) The director of the authority may, in accordance with regulations adopted by the authority, deny, suspend, or revoke any approval issued under this division or may place any approved program on probation, upon the finding by the director of the authority of an imminent threat to the public health and safety as evidenced by the occurrence of any of the actions listed in subdivision (f).

(f) Any of the following actions shall be considered evidence of a threat to the public health and safety, and may result in the denial, suspension, probation, or revocation of a program's approval or application for approval pursuant to this division.

(1) Fraud.

(2) Incompetence.

(3) The commission of any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications, functions, and duties of training program directors and instructors.

(4) Conviction of any crime that is substantially related to the qualifications, functions, and duties of training program directors and instructors. The record of conviction or a certified copy of the record shall be conclusive evidence of ~~such~~ the conviction.

(5) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, ~~any provision of~~ this division or the regulations promulgated by the authority pertaining to the review and approval of training programs in pediatric first aid, pediatric CPR, and preventive health practices as specified in paragraph (2) of subdivision (a) of Section 1596.866.

1 (g) In order to ensure that adequate qualified training
2 programs are available to provide training in the
3 preventive health practices course to all persons who are
4 required to have that training, the authority may, after
5 approval of the Commission on Emergency Medical
6 Services pursuant to Section 1799.50, establish temporary
7 standards for training programs for use until permanent
8 standards ~~can be~~ *are* adopted pursuant to Chapter 3.5
9 (commencing with Section 11340) of Part 1 of Division 3
10 of Title 2 of the Government Code.

11 (h) Persons who, prior to the date on which the
12 amendments to this section enacted in 1998 become
13 operative, have completed a course or courses in
14 preventive health practices as specified in subparagraph
15 (C) of paragraph (2) of subdivision (a) of Section
16 1596.866, and have a certificate of completion card ~~of~~ *for*
17 a course or courses in preventive health practices, or
18 certified copies of transcripts that identify the number of
19 hours and the specific course or courses taken for training
20 in preventive health practices shall be deemed to have
21 met the requirement for training in preventive health
22 practices.

23 SEC. 107. Section 18020 of the Health and Safety Code
24 is amended to read:

25 18020. (a) ~~Except for the provisions as provided in~~
26 Section 18027.3, and except as provided by the National
27 Manufactured Housing Construction and Safety
28 Standards Act of 1974 (42 U.S.C. Sec. 5401; et seq.), as it
29 applies to the manufacture of new manufactured
30 housing, the department shall enforce this part and the
31 rules and regulations adopted pursuant to this part.

32 (b) The department may, at the department's sole
33 option, enforce Chapter 4 (commencing with Section
34 18025) and the rules and regulations adopted pursuant to
35 ~~that~~ Chapter 4 through department-approved
36 third-party entities. The department shall adopt
37 regulations for the approval of third-party entities,
38 including, but not limited to, all of the following criteria:

39 (1) Freedom from any conflict of interest.

40 (2) Qualifications of personnel.

1 (3) Frequency of inspections or monitorings of
2 manufacturer quality control.

3 (4) Involvement in collusive or fraudulent actions
4 related to the performance of activities required by
5 Section 18013.2.

6 (5) Any other conditions of operation that the
7 department may reasonably require.

8 (c) The department may require rotation of
9 third-party entities performing inspection services for
10 any manufacturing facility within the state to prevent the
11 third-party entity from either performing *inspections*
12 within the same facility for more than 365 calendar days
13 or performing inspections for any facility when the
14 third-party entity performed inspection services within
15 the previous 365 calendar days.

16 (d) The department shall monitor the performance of
17 third-party entities approved pursuant to subdivision (b)
18 and shall require periodic reports in writing containing
19 information that the department may reasonably require
20 to determine compliance with the conditions of the
21 department's approval.

22 (1) When the department receives information about
23 an alleged inadequacy in the performance of a
24 third-party entity, including any involvement in collusive
25 or fraudulent actions related to the performance of
26 activities required by Section 18013.2, it shall consider the
27 information in its monitoring efforts and make a
28 determination about the validity of the alleged
29 inadequacy in a timely manner.

30 (2) When the department determines, either through
31 its monitoring efforts or through information provided by
32 any other person, that an approved third-party entity has
33 failed to perform according to the conditions of approval,
34 the department may withdraw approval by forwarding
35 written notice to the approved third-party entity by
36 registered mail to its address of record, briefly
37 summarizing the cause for the department's decision.

38 (3) A third-party entity, upon having its approval
39 withdrawn by the department, may request a hearing
40 before the director of the department. The request for

1 hearing shall be in writing and either delivered or
2 postmarked prior to midnight on the 10th calendar day
3 from the date of the department's notice.

4 (4) The department, upon timely receipt of a written
5 request for hearing, shall, within 30 calendar days,
6 schedule a hearing before the director or his or her agent.
7 All hearings pursuant to this subdivision shall be held in
8 the department's Sacramento offices and the decision of
9 the director shall be final.

10 (5) A third-party entity whose approval has been
11 withdrawn by the department shall not be permitted to
12 reapply for the department's approval pursuant to
13 subdivision (b) for a period of one year from the date that
14 the approval was withdrawn by the department.

15 (6) A third-party entity whose approval has been
16 withdrawn more than once by the department shall not
17 be permitted to reapply for department approval
18 pursuant to subdivision (b) for a period of not less than
19 one year from the date that the department's approval
20 was last withdrawn.

21 (7) No third-party entity shall perform the activities
22 required by Section 18013.2 unless it has the approval of
23 the department.

24 (e) (1) Upon finding a violation of subdivision (b) on
25 the part of a third-party entity, the director shall issue
26 citations and levy administrative fines. Each citation and
27 fine assessment shall be in writing and describe the
28 particulars for the citation. The citation and fine
29 assessment shall be issued not later than six months after
30 discovery of the violation.

31 (2) The fine for ~~the a~~ first violation shall be at least five
32 hundred dollars (\$500) and shall not exceed one thousand
33 dollars (\$1,000). The fine for ~~the a~~ second violation shall
34 be at least two thousand dollars (\$2,000) and *shall* not
35 exceed four thousand dollars (\$4,000). The fine for ~~the a~~
36 third violation shall be at least five thousand dollars
37 (\$5,000), and shall not exceed ten thousand dollars
38 (\$10,000). The fines shall be assessed for each day the
39 violation occurs. If a third-party entity has been cited
40 more than three times during a 365-day period, the

1 approval to conduct inspections on behalf of the
2 department shall be suspended for a minimum of one
3 year.

4 (3) The third-party entity may request an
5 administrative hearing on the citation or fine. If the party
6 fails to request a hearing within 30 days, and does not pay
7 the fine, the approval to perform inspections shall be
8 automatically revoked, until the time that the
9 department finds that the circumstances ~~which~~ *that* led
10 to the citation have been corrected and the fines have
11 been paid.

12 (4) Upon review of the findings from the
13 administrative hearing, the director may modify, rescind,
14 or uphold the citation and fine assessment. The decision
15 of the director shall be served by regular mail.

16 (5) The fines shall be paid into the Housing and
17 Community Development Fund, which is hereby
18 created in the State Treasury, and shall be used, when
19 appropriated by the Legislature, to offset the
20 department's costs to administer this part.

21 (f) The remedies provided in this part to any
22 aggrieved party are not exclusive and shall not preclude
23 the applicability of any other provision of law.

24 SEC. 108. Section 18025.5 of the Health and Safety
25 Code is amended to read:

26 18025.5. (a) Pursuant to the National Manufactured
27 Housing Construction and Safety Standards Act of 1974
28 (42 U.S.C. Sec. 5401 et seq.), the department may assume
29 responsibility for the enforcement of manufactured
30 home and mobilehome construction and safety standards
31 relating to any issue with respect to which a federal
32 standard has been established. The department may
33 adopt regulations to ensure acceptance by the Secretary
34 of Housing and Urban Development of California's plan
35 for the administration and enforcement of federal
36 manufactured home and mobilehome safety and
37 construction standards.

38 (b) The department may conduct inspections and
39 investigations that it determines may be necessary to

1 secure enforcement of this part and regulations adopted
2 pursuant to this part.

3 (c) Subdivision (b) shall not apply to the enforcement
4 of Section 18027.3 unless the department determines *that*
5 there is a compelling reason to exercise oversight in the
6 inspection of recreational vehicles or park trailers at a
7 factory, in which case the department may investigate
8 the inspection, or conduct a department inspection, on
9 recreational vehicles or park trailers at a factory and
10 utilize any means necessary to collect a fee ~~on~~ *from* the
11 manufacturer for the cost of the department
12 investigation or inspection.

13 (d) For the purposes of enforcement of this part and
14 the related regulations, persons duly designated by the
15 director of the department, upon presenting appropriate
16 credentials to the owner, operator, or agent in charge,
17 may do both of the following:

18 (1) Enter, at ~~any~~ reasonable times and without
19 advance notice, any factory, warehouse, sales lot, or
20 establishment in which manufactured homes,
21 mobilehomes, commercial coaches, or special purpose
22 commercial coaches are manufactured, stored, held for
23 sale, sold, or offered for sale, rent, or lease.

24 (2) Inspect, at reasonable times and within reasonable
25 limits and in a reasonable manner, any factory,
26 warehouse, sales lot, or establishment, and inspect the
27 books, papers, records, and documents to ensure
28 compliance with this part.

29 SEC. 109. Section 25989.1 of the Health and Safety
30 Code is amended to read:

31 25989.1. (a) Any traveling circus or carnival that
32 performs in ~~California~~, *this state* shall do both of the
33 following:

34 (1) Notify each entity that provides animal control
35 services for a city, county, or city and county in which the
36 traveling circus or carnival intends to perform of its intent
37 to perform within that jurisdiction. Notice shall be given
38 at least 14 days prior to the first performance in that city,
39 county, or city and county.

(2) Provide each entity that provides animal control services for a city, county, or city and county in which the traveling circus or carnival intends to perform with a schedule of its performances in California.

(b) For the purposes of this chapter, “traveling circus or carnival” does not include any fair regulated under Chapter 4 (commencing with Section 19400) of Division 8 of the Business and Professions Code, or any rodeo, horse, or school event.

(c) Any violation of subdivision (a) shall be punishable by a fine of not less than five hundred dollars (\$500) and not more than two thousand dollars (\$2,000) for a first violation, and not less than one thousand five hundred dollars (\$1,500) ~~nor and not~~ more than five thousand dollars (\$5,000) for any subsequent violation.

SEC. 110. Section 33298 of the Health and Safety Code is repealed.

~~33298. In the case of development under paragraph (3) of subdivision (c) of Section 33021 of an area not within an incorporated city, approval of the local agency formation commission having jurisdiction over the project area shall be obtained prior to preparation of the redevelopment plan.~~

SEC. 111. Section 33392 of the Health and Safety Code is amended to read:

33392. Notwithstanding any other provision of this part, an agency with the approval of the legislative body of the community may acquire, by negotiation or other means, real property in a project area at any time after formulation of the preliminary plan for ~~such~~ *the* area by the planning commission, and prior to the adoption of the redevelopment plan by the legislative body of the community, provided, however, *that* an agency may not ~~such~~ *that* acquisition prior to adoption of the redevelopment plan. ~~In the case of development under paragraph (3) of subdivision (c) of Section 33021, an agency may not exercise any powers pursuant to Section 33391, prior to adoption of the redevelopment plan by the legislative body.~~

1 SEC. 112. Section 33492.22 of the Health and Safety
2 Code is amended to read:

3 33492.22. (a) Notwithstanding the time limit in
4 subdivision (b) of Section 33492.18, the Planning
5 Commission and the Redevelopment ~~Agency~~
6 Commission of the City and County of San Francisco shall
7 certify an environmental impact report for the Hunter's
8 Point Shipyard Redevelopment Plan within 30 months
9 after the effective date of the ordinance adopting the
10 redevelopment plan.

11 (b) The following provisions shall apply to the
12 approval of projects that implement a redevelopment
13 plan authorized by this article:

14 (1) For 18 months after the effective date of the
15 ordinance adopting the redevelopment plan, or until the
16 certification of an environmental impact report for the
17 redevelopment plan if the report is certified during that
18 18-month period, subdivision (c) of Section 33492.18 shall
19 apply.

20 (2) If an environmental impact report for the
21 redevelopment plan is not certified within 18 months
22 after the effective date of the ordinance adopting the
23 plan, then during the succeeding 12 months or until the
24 certification of an environmental impact report if the
25 report is certified during that 12-month period, no
26 project, as defined in Section 21065 of the Public
27 Resources Code, that implements the redevelopment
28 plan shall be approved by the agency or the community
29 unless any of the following occurs:

30 (A) The agency or the community has approved a
31 negative declaration or certified an environmental
32 impact report, or has certified a subsequent or
33 supplemental environmental impact report, for the
34 project before the expiration of the 18-month period
35 provided in Section 33492.18.

36 (B) The agency or the community has certified a
37 subsequent or supplemental environmental impact
38 report for the project where the environmental impact
39 report for the project was certified before the expiration
40 of the 18-month period provided in Section 33492.18.

(C) The agency or the community complies with Chapter 4.5 (commencing with Section 21156) of Division 13 of the Public Resources Code for subsequent projects described in a master environmental impact report as being within the scope of the report, and that master environmental impact report was certified before the expiration of the 18-month period provided in Section 33492.18.

(D) The project is categorically exempt pursuant to Article 19 (commencing with Section 15300) of Chapter 3 of Division 6 of Title 14 of the California Code of Regulations.

SEC. 113. Section 44015 of the Health and Safety Code is amended to read:

44015. (a) A licensed smog check station shall not issue a certificate of compliance, except as authorized by this chapter, to any vehicle that meets the following criteria:

(1) A vehicle that has been tampered with.

(2) A vehicle that, prior to repairs, has been initially identified by the smog check station as a gross polluter. Certification of a gross polluting vehicle shall be conducted by a designated test-only facility, or a test-and-repair station that is both licensed and certified pursuant to ~~Section~~ Sections 44014 and 44014.2 and is participating in the pilot program pursuant to subparagraph (B) of paragraph (2) of subdivision (g) of Section 44014.5.

(3) A vehicle described in subdivision (c).

(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance.

(c) (1) A repair cost waiver shall be issued, upon request of the vehicle owner, by an entity authorized to perform referee functions for a vehicle that has been properly tested but does not meet the applicable emission standards when it is determined that no adjustment or repair can be made that will reduce emissions from the inspected motor vehicle without exceeding the

1 applicable repair cost limit established under Section
2 44017 and that every defect specified by paragraph (2) of
3 subdivision (a) of Section 43204, and by paragraphs (2)
4 and (3) of subdivision (a) of Section 43205, has been
5 corrected. A repair cost waiver issued pursuant to this
6 paragraph shall be accepted in lieu of a certificate of
7 compliance for the purposes of compliance with Section
8 4000.3 of the Vehicle Code. No repair cost waiver shall
9 exceed two years' duration. No repair cost waiver shall be
10 issued until the vehicle owner has expended an amount
11 equal to the applicable repair cost limit specified in
12 Section 44017.

13 (2) An economic hardship extension shall be issued,
14 upon request of a qualified low-income motor vehicle
15 owner, by an entity authorized to perform referee
16 functions, for a motor vehicle that has been properly
17 tested but does not meet the applicable emission
18 standards when it is determined that no adjustment or
19 repair can be made that will reduce emissions from the
20 inspected motor vehicle without exceeding the
21 applicable repair cost limit, as established pursuant to
22 Section 44017.1, that every defect specified in paragraph
23 (2) of subdivision (a) of Section 43204, and in paragraphs
24 (2) and (3) of subdivision (a) of Section 43205, has been
25 corrected, that the low-income vehicle owner would
26 suffer an economic hardship if the extension is not issued,
27 and that all appropriate emissions-related repairs up to
28 the amount of the applicable repair cost limit in Section
29 44017.1 have been performed.

30 (d) No repair cost waiver or economic hardship
31 extension shall be issued under any of the following
32 circumstances:

33 (1) If a motor vehicle was issued a repair cost waiver
34 or economic hardship extension in the previous biennial
35 inspection of that vehicle. A repair cost waiver or
36 economic hardship extension may be issued to a motor
37 vehicle owner only once for a particular motor vehicle
38 belonging to that owner. However, a repair cost waiver
39 or economic hardship extension may be issued for a motor
40 vehicle that participated in a previous waiver or

1 extension program prior to January 1, 1998, as determined
2 by the department. For waivers or extensions issued in
3 the program operative on or after January 1, 1998, a
4 waiver or extension may be issued for a motor vehicle
5 only once per owner.

6 (2) Upon initial registration of all of the following: a
7 direct import motor vehicle, a motor vehicle previously
8 registered outside this state, a dismantled motor vehicle
9 pursuant to Section 11519 of the Vehicle Code, a motor
10 vehicle that has had an engine change, an alternate fuel
11 vehicle, and a specially constructed vehicle.

12 (e) Unless the certificate is issued to a licensed
13 automobile dealer, a certificate of compliance or
14 noncompliance shall be valid for 90 days. If the certificate
15 is issued to a licensed automobile dealer, the certificate
16 shall be valid for 180 days.

17 (f) A test may be made at any time within 90 days prior
18 to the date otherwise required.

19 SEC. 114. Section 50518 of the Health and Safety Code
20 is amended and renumbered to read:

21 ~~50518.~~

22 ~~50514.5.~~ Notwithstanding the proviso to subitem (b)
23 of Item 190 of the Budget Act of 1976, sixty thousand
24 dollars (\$60,000) of the amount appropriated by subitem
25 (b) of Item 190 of the Budget Act of 1976 shall not be
26 allocated and expended as provided therein and shall
27 instead be allocated by the Department of Finance to the
28 Department of Housing and Community Development
29 for a loan to a community nonprofit organization for
30 technical assistance in the development of an industrial
31 park in the city of Calexico. ~~Such~~ The loan shall be repaid
32 upon ~~such~~ the terms and conditions ~~as may be~~ prescribed
33 by the Department of Finance.

34 SEC. 115. Section 111940 of the Health and Safety
35 Code is amended to read:

36 111940. (a) If any person violates any provision of
37 Chapter 4 (commencing with Section 111950), Chapter
38 5 (commencing with Section 112150), Chapter 6
39 (commencing with Section 112350), Chapter 7
40 (commencing with Section 112500), Chapter 8

1 (commencing with Section 112650), Chapter 10
2 (commencing with Section 113025), or Article 3
3 (commencing with Section 113250) of Chapter 11 *of this*
4 *part*, or Chapter 4 (commencing with Section 108100) of
5 Part 3, or any regulation adopted pursuant to these
6 provisions, the department may assess a civil penalty
7 against that person as provided by this section.

8 (b) The penalty may be in an amount not to exceed
9 one thousand dollars (\$1,000) per day. Each day that a
10 violation continues shall be considered a separate
11 violation.

12 (c) If, after examination of a possible violation and the
13 facts surrounding that possible violation, the department
14 concludes that a violation has occurred, the department
15 may issue a complaint to the person charged with the
16 violation. The complaint shall allege the acts or failures to
17 act that constitute the basis for the violation and the
18 amount of the penalty. The complaint shall be served by
19 personal service or by certified mail and shall inform the
20 person so served of the right to a hearing.

21 (d) Any person served with a complaint pursuant to
22 subdivision (c) of this section may, within 20 days after
23 service of the complaint, request a hearing by filing with
24 the department a notice of defense. A notice of defense
25 is deemed to have been filed within the 20-day period if
26 it is postmarked within the 20-day period. If a hearing is
27 requested by the person, it shall be conducted within 90
28 days after the receipt by the department of the notice of
29 defense. If no notice of defense is filed within 20 days after
30 service of the complaint, the department shall issue an
31 order setting the penalty as proposed in the complaint
32 unless the department and the person have entered into
33 a settlement agreement, in ~~that~~ *which* case the
34 department shall issue an order setting the penalty in the
35 amount specified in the settlement agreement. When the
36 person has not filed a notice of defense or where the
37 department and the person have entered into a
38 settlement agreement, the order shall not be subject to
39 review by any court or agency.



(e) Any hearing required under this section shall be conducted pursuant to the procedures specified in Section 100171, except to the extent they are inconsistent with the specific requirements of this section.

(f) Orders setting civil penalties under this section shall become effective and final upon issuance thereof, and payment shall be made within 30 days of issuance. A copy of the order shall be served by personal service or by certified mail upon the person served with the complaint.

(g) Within 30 days after service of a copy of a decision issued by the director after a hearing, any person so served may file with the superior court a petition for writ of mandate for review of the decision. Any person who fails to file the petition within this 30-day period may not challenge the reasonableness or validity of the decision or order of the director in any judicial proceeding brought to enforce the decision or order or for other remedies. Section 1094.5 of the Code of Civil Procedure shall govern any proceedings conducted pursuant to this subdivision. In all proceedings pursuant to this subdivision, the court shall uphold the decision of the director if the decision is based upon substantial evidence in the whole record. The filing of a petition for writ of mandate shall not stay any corrective action required pursuant to the Miscellaneous Food, Food Facility, and Hazardous Substances Act (~~Section 27~~), as defined in subdivision (b) of Section 27, or the accrual of any penalties assessed pursuant to this section. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.

(h) The remedies under this section are in addition to, and do not supersede, or limit, any and all other remedies, civil or criminal.

SEC. 116. Section 120440 of the Health and Safety Code is amended to read:

120440. (a) For the purposes of this chapter, the following definitions shall apply:

(1) "Health care provider" means any person licensed pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code or a clinic or health

1 facility licensed pursuant to Division 2 (commencing
2 with Section 1200).

3 (2) “Schools, child care facilities, and family child care
4 homes” means those institutions referred to in
5 subdivision (b) of Section 120335, regardless of whether
6 they directly provide immunizations to patients or
7 clients.

8 (3) “WIC service provider” means any public or
9 private nonprofit agency contracting with the
10 department to provide services under the California
11 Special Supplemental Food Program for Women, Infants,
12 and Children, as provided for in Article 2 (commencing
13 with Section 123275) of Chapter 1 of Part 2 of Division 106.

14 (4) “Health care plan” means a health care service
15 plan as defined in subdivision (f) of Section 1345 or an
16 insurer as described in Sections 10123.5 and 10123.55 of
17 the Insurance Code, regardless of whether the plan
18 directly provides immunizations to patients or clients.

19 (b) Local health officers may operate immunization
20 information systems pursuant to their authority under
21 Section 120175, in conjunction with the Immunization
22 Branch of the State Department of Health Services.

23 (c) Notwithstanding any other provision of law, unless
24 a refusal to permit recordsharing is made pursuant to
25 subdivision (e), health care providers may disclose the
26 information set forth in paragraphs (1) to (9), inclusive,
27 from the patient’s medical record to local health
28 departments operating countywide immunization
29 information and reminder systems and the State
30 Department of Health Services. Local health
31 departments and the State Department of Health
32 Services may disclose the information set forth in
33 paragraphs (1) to (9), inclusive, to other local health
34 departments and health care providers taking care of the
35 patient, upon request for information pertaining to a
36 specific person. Local health departments and the State
37 Department of Health Services may disclose the
38 information in paragraphs (1) to (6), inclusive, and
39 paragraphs (8) and (9), to, schools, child care facilities,
40 and family child care homes to which the person is being

1 admitted or in attendance, and WIC service providers
2 providing services to the person and health care plans
3 arranging for immunization services for the patient, upon
4 request for information pertaining to a specific person.
5 The following information shall be subject to this
6 subdivision:

7 (1) The name of the patient and names of the patient's
8 parents or guardians.

9 (2) Date of birth of the patient.

10 (3) Types and dates of immunizations received by the
11 patient.

12 (4) Manufacturer and lot number for each
13 immunization received.

14 (5) Adverse reaction to immunizations received.

15 (6) Other nonmedical information necessary to
16 establish the patient's unique identity and record.

17 (7) Current address and telephone number of the
18 patient and the patient's parents or guardians.

19 (8) Patient's gender.

20 (9) Patient's place of birth.

21 (d) (1) Health care providers, local health
22 departments, and the State Department of Health
23 Services shall maintain the confidentiality of information
24 listed in subdivision (c) in the same manner as other
25 medical record information with patient identification
26 that they possess. These providers and departments are
27 subject to civil action and criminal penalties for the
28 wrongful disclosure of the information listed in
29 subdivision (c), in accordance with existing law. They
30 shall use the information listed in subdivision (c) only for
31 the following purposes:

32 (A) To provide immunization services to the patient,
33 including issuing reminder notifications to patients or
34 their parents or guardians when immunizations are due.

35 (B) To provide or facilitate provision of third-party
36 payer payments for immunizations.

37 (C) To compile and disseminate statistical information
38 of immunization status on groups of patients or
39 populations in California, without patient identifying

1 information for these patients included in these groups or
2 populations.

3 (2) Schools, child care facilities, family child care
4 homes, WIC service providers, and health care plans shall
5 maintain the confidentiality of information listed in
6 subdivision (c) in the same manner as other client,
7 patient, and pupil information that they possess. These
8 institutions and providers are subject to civil action and
9 criminal penalties for the wrongful disclosure of the
10 information listed in subdivision (c), in accordance with
11 existing law. They shall use the information listed in
12 subdivision (c) only for those purposes provided in
13 subparagraphs (A) to (C), inclusive, of paragraph (1)
14 and as follows:

15 (A) In the case of schools, child care facilities, and
16 family child care homes, to carry out their responsibilities
17 regarding required immunization for attendance, as
18 described in Chapter 1 (commencing with Section
19 120325).

20 (B) In the case of WIC service providers, to perform
21 immunization status assessments of clients and to refer
22 those clients found to be due or overdue for
23 immunizations to health care providers.

24 (C) In the case of health care plans, to facilitate
25 payments to health care providers, to assess the
26 immunization status of their clients, and to tabulate
27 statistical information on the immunization status of
28 groups of patients, without including patient-identifying
29 information in these tabulations.

30 (e) A patient or a patient's parent or guardian may
31 refuse to permit recordsharing. The health care provider
32 administering immunization shall inform the patient or
33 the patient's parent or guardian of the following:

34 (1) The information listed in subdivision (c) may be
35 shared with local health departments, and the State
36 Department of Health Services. The health care provider
37 shall provide the name and address of the department or
38 departments with which the provider will share the
39 information.



(2) Any of the information shared with local health departments and the State Department of Health Services shall be treated as confidential medical information and shall be used only to share with health care providers, schools, child care facilities, family child care homes, WIC service providers, and health care plans, upon request. These providers, agencies, and institutions shall, in turn, treat the shared information as confidential, and shall use it only as described in subdivision (d).

(3) The patient or patient's parent or guardian has the right to examine any immunization-related information shared in this manner and to correct any errors in it.

(4) The patient or the patient's parent or guardian may refuse to allow this information to be shared in the manner described, or to receive immunization reminder notifications at any time, or both.

(f) If the patient or patient's parent or guardian refuses to allow the information to be shared, pursuant to paragraph (4) of subdivision (e), the health care provider ~~shall~~ *may* not share this information in the manner described in subdivision (c).

(g) Upon request of the patient or the patient's parent or guardian, in writing or by other means acceptable to the recipient, a local health department or the State Department of Health Services that has received information about a person pursuant to subdivision (c) shall do all of the following:

(1) Provide the name and address of other persons or agencies with whom the recipient has shared the information.

(2) Stop sharing the information in its possession after the date of the receipt of the request.

(h) Upon notification, in writing or by other means acceptable to the recipient, of an error in the information, a local health department or the State Department of Health Services that has information about a person pursuant to subdivision (c) shall correct the error. If the recipient is aware of a disagreement about whether an error exists, information to that effect may be included.

(i) Section 120330 shall not apply to this section.

1 SEC. 117. Section 124980 of the Health and Safety
2 Code is amended to read:

3 124980. (a) The director shall establish any
4 regulations and standards for hereditary disorders
5 programs as the director deems necessary to promote and
6 protect the public health and safety, in accordance with
7 the principles established pursuant to this section. These
8 principles shall include, but not be limited to, the
9 following:

10 (1) The public, especially communities and groups
11 particularly affected by programs on hereditary
12 disorders, should be consulted before any regulations and
13 standards are adopted by the department.

14 (2) The incidence, severity, and treatment costs of
15 each hereditary disorder and its perceived burden by the
16 affected community should be considered; and ~~that~~,
17 where appropriate, state and national experts in the
18 medical, psychological, ethical, social, and economic
19 effects or programs for the detection and management of
20 hereditary disorders *shall* be consulted by the
21 department.

22 (3) Information on the operation of all programs on
23 hereditary disorders within the state, except for
24 confidential information obtained from participants in
25 the programs, *shall* be open and freely available to the
26 public.

27 (4) Clinical testing procedures established for use in
28 programs, facilities, and projects *shall* be accurate,
29 provide maximum information, and—~~that~~ the testing
30 procedures selected *shall* produce results that are subject
31 to minimum misinterpretation.

32 (5) No test or tests ~~shall~~ *may* be performed on any
33 minor over the objection of the minor's parents or
34 guardian, nor may any tests be performed unless the
35 parent or guardian is fully informed of the purposes of
36 testing for hereditary disorders; and is given reasonable
37 opportunity to object to the testing.

38 (6) No testing, except initial screening for PKU and
39 other diseases that may be added to the newborn
40 screening program, shall require mandatory

1 participation, and no testing programs shall require
2 restriction of childbearing, and participation in a testing
3 program shall not be a prerequisite to eligibility for, or
4 receipt of, any other service or assistance from, or to
5 participate in, any other program, except where
6 necessary to determine eligibility for further programs of
7 diagnoses of or therapy for hereditary conditions.

8 (7) Counseling services for hereditary disorders *shall*
9 be available through the program or a referral source for
10 all persons determined to be or who believe themselves
11 to be at risk for a hereditary disorder as a result of
12 screening programs; the counseling ~~is~~ *shall be*
13 nondirective, ~~emphasizes~~ *emphasize* informing the
14 client, and *shall* not require restriction of childbearing.

15 (8) All participants in programs on hereditary
16 disorders *shall* be protected from undue physical and
17 mental harm, and except for initial screening for PKU
18 and other diseases that may be added to newborn
19 screening programs, *shall* be informed of the nature of
20 risks involved in participation in the programs, and those
21 determined to be affected with genetic disease *shall* be
22 informed of the nature, and where possible, the cost, of
23 available therapies or maintenance programs, and *shall*
24 be informed of the possible benefits and risks associated
25 with ~~such~~ *these* therapies and programs.

26 (9) All testing results and personal information
27 generated from hereditary disorders programs *shall* be
28 made available to an individual over 18 years of age, or to
29 the individual's parent or guardian. If the individual is a
30 minor or incompetent, all testing results that have
31 positively determined the individual to either have, or be
32 a carrier of, a ~~heredity~~ *hereditary* disorder shall be given
33 through a physician or other source of health care.

34 (10) All testing results and personal information from
35 hereditary disorders programs obtained from any
36 individual, or from specimens from any individual, *shall*
37 be held confidential and be considered a confidential
38 medical record except for ~~such~~ information ~~as~~ *that* the
39 individual, parent, or guardian consents to be released,
40 provided that the individual is first fully informed of the

1 scope of the information requested to be released, of all
2 of the risks, benefits, and purposes for the release, and of
3 the identity of those to whom the information will be
4 released or made available, except for statistical data
5 compiled without reference to the identity of any
6 individual, and except for research purposes, provided
7 that pursuant to *Subpart A (commencing with Section*
8 *46.101) of Part 46 of Title 45 of the Code of Federal*
9 *Regulations—Section 46.101 et seq.* entitled “~~Protection~~
10 “*Basic HHS Policy for Protection of Human Subjects,*”
11 the research has first been reviewed and approved by an
12 institutional review board that certifies the approval to
13 the custodian of the information and further certifies that
14 in its judgment the information is of such potentially
15 substantial public health value that modification of the
16 requirement for legally effective prior informed consent
17 of the individual is ethically justifiable.

18 (11) An individual whose confidentiality has been
19 breached as a result of any violation of the provisions of
20 the Hereditary Disorders Act (~~Section 27~~), *as defined in*
21 *subdivision (b) of Section 27*, may recover compensatory
22 damages; and, in addition, may recover civil damages not
23 to exceed ten thousand dollars (\$10,000), reasonable
24 attorney’s fees, and the costs of litigation.

25 (b) The department shall recommend appropriate
26 criteria and standards for licensing genetic counselors. In
27 the process of developing the recommended criteria and
28 standards, the department shall consult with a group of
29 medical experts representing medical professional
30 organizations including, but not limited to, the Medical
31 Board of California, the California Medical Association,
32 and organizations representing genetic counselors in
33 California. The department shall report its
34 recommendations to the Legislature by January 1, 2000.

35 SEC. 118. Section 129820 of the Health and Safety
36 Code is amended to read:

37 129820. No contract for the construction or alteration
38 of any hospital building, made or executed on or after
39 January 1, 1983, by the governing board or authority of
40 any hospital or other similar public board, body, or officer

1 otherwise vested with authority to make or execute ~~such~~
2 ~~a~~ *the* contract, is valid, and no money shall be paid for any
3 work done under ~~such a~~ *the* contract or for any labor or
4 materials furnished in constructing or altering ~~any such~~
5 *the hospital* building, unless all of the following
6 requirements are satisfied:

7 (a) The plans and specifications comply with this
8 chapter and the requirements contained in the California
9 Building Standards Code.

10 (b) The written approval thereof has first been
11 obtained from the office.

12 (c) The hospital building is to be accessible to, and
13 usable by, persons with disabilities.

14 (d) The plans and specifications comply with the fire
15 and panic safety requirements of the California Building
16 Standards Code.

17 SEC. 119. Section 1063.6 of the Insurance Code is
18 amended to read:

19 1063.6. All proceedings in which the insolvent insurer
20 is a party or is obligated to defend a party in any court in
21 the state shall, subject to waiver by the association in
22 specific cases involving covered claims and subject to
23 waiver by the commissioner as to matters that are not
24 covered claims, be stayed for 60 days from the date that
25 an order of liquidation or an order of receivership with a
26 finding of insolvency has been entered by a superior court
27 in this state or by a court in the state of domicile of the
28 insurer, and an additional time thereafter as may be
29 determined necessary by the court to permit proper
30 defense or conduct of all pending causes of action by the
31 association or the commissioner, as applicable. The stay as
32 to matters to which the insolvent insurer is a party shall
33 be superseded by and when an injunction or stay order is
34 entered by the court in this state having jurisdiction of the
35 liquidation or the ancillary liquidation.

36 The liquidator, receiver, or statutory successor of an
37 insolvent member insurer shall permit reasonable access
38 by the association to the ~~solvent~~ *insolvent* insurer's
39 records as is necessary for the association to carry out its
40 duties with regard to covered claims. In addition, the

1 liquidator, receiver, or statutory successor shall provide
2 the association with copies of these records upon the
3 reasonable request of the association and at the expense
4 of the association.

5 SEC. 120. Section 1765.1 of the Insurance Code is
6 amended to read:

7 1765.1. No surplus line broker shall place any
8 coverage with a nonadmitted insurer unless the insurer
9 is domiciled in the Republic of Mexico and the placement
10 covers only liability arising out of the ownership,
11 maintenance, or use of a motor vehicle, aircraft, or boat
12 in the Republic of Mexico, or, at the time of placement,
13 the nonadmitted insurer:

14 (a) (1) Has established its financial stability,
15 reputation, and integrity, for the class of insurance the
16 broker proposes to place, by satisfactory evidence
17 submitted to the commissioner through a surplus line
18 broker.

19 (2) ~~(A)~~ Has capital and surplus ~~that~~ *as follows*:

20 (A) *Capital and surplus that* together total at least
21 fifteen million dollars (\$15,000,000). “Capital” shall be as
22 defined in Section 36. “Surplus” shall be defined as assets
23 exceeding the sum of liabilities for losses reported,
24 expenses, taxes, and all other indebtedness and
25 reinsurance of outstanding risks as provided by law and
26 paid-in capital in the case of an insurer issuing or having
27 outstanding shares of capital stock. The type of assets to
28 be used in calculating capital and surplus shall be as
29 follows: at least fifteen million dollars (\$15,000,000) shall
30 be in the form of cash, or securities of the same character
31 and quality as specified in Sections 1170 to 1182, inclusive,
32 or in readily marketable securities listed on regulated
33 United States² States national or principal regional
34 securities exchanges. The remaining assets shall be in the
35 form just described, or in the form of investments of
36 substantially the same character and quality as described
37 in Sections 1190 to 1202, inclusive. In calculating capital
38 and surplus under this section, the term “same character
39 and quality” shall permit, but not require, the
40 commissioner to approve assets maintained in

1 accordance with the laws of another state or country. The
2 commissioner shall be guided by any limitations,
3 restrictions, or other requirements of this code or the
4 National Association of Insurance Commissioners'
5 Accounting Practices and Procedures Manual in
6 determining whether assets substantially similar to those
7 described in Sections 1190 to 1202, inclusive, qualify. The
8 commissioner shall retain the discretion to disapprove or
9 disallow any asset that is not of a sound quality, or that he
10 or she deems to create an unacceptable risk of loss to the
11 insurer or to policyholders. Securities specifically valued
12 by the National Association of Insurance Commissioners
13 Securities Valuation Office shall be presumed readily
14 marketable absent evidence to the contrary. Letters of
15 credit will not qualify as assets in the calculation of
16 surplus. If less than fifteen million dollars (\$15,000,000),
17 the commissioner has affirmatively found that the capital
18 and surplus is adequate to protect California
19 policyholders. The commissioner shall consider, on
20 determining whether to make this finding, factors such as
21 quality of management, the capital and surplus of any
22 parent company, the underwriting profit and investment
23 income trends, and the record of claims payment and
24 claims handling practices of the nonadmitted insurer;~~or~~

25 (B) In the case of an "Insurance Exchange" created
26 and authorized under the laws of individual states,
27 maintains capital and surplus of not less than fifty million
28 dollars (\$50,000,000) in the aggregate. "Capital" shall be
29 ~~as~~ defined *as* in Section 36. "Surplus" shall be defined as
30 assets exceeding the sum of liabilities for losses reported,
31 expenses, taxes, and all other indebtedness and
32 reinsurance of outstanding risks as provided by law and
33 paid-in capital in the case of an insurer issuing or having
34 outstanding shares of capital stock. The type of assets to
35 be used in calculating capital and surplus shall be as
36 follows: at least fifteen million dollars (\$15,000,000) shall
37 be in the form of cash, or securities of the same character
38 and quality as specified in Sections 1170 to 1182, inclusive,
39 or in readily marketable securities listed on regulated
40 United States' national or principal regional securities

1 exchanges. The remaining assets shall be in the form just
2 described, or in the form of investments of substantially
3 the same character and quality as described in Sections
4 1190 to 1202, inclusive. In calculating capital and surplus
5 under this section, the term “same character and quality”
6 shall permit, but not require, the commissioner to
7 approve assets maintained in accordance with the laws of
8 another state or country. The commissioner shall be
9 guided by any limitations, restrictions, or other
10 requirements of this code or the National Association of
11 Insurance Commissioners’ Accounting Practices and
12 Procedures Manual in determining whether assets
13 substantially similar to those described in Sections 1190 to
14 1202, inclusive, qualify. The commissioner shall retain the
15 discretion to disapprove or disallow any asset that is not
16 of a sound quality, or that he or she deems to create an
17 unacceptable risk of loss to the insurer or to policyholders.
18 Securities specifically valued by the National Association
19 of Insurance Commissioners Securities Valuation Office
20 shall be presumed readily marketable absent evidence to
21 the contrary. Letters of credit will not qualify as assets in
22 the calculation of surplus. In the case of an Insurance
23 Exchange ~~which~~ *that* maintains funds for the protection
24 of all Insurance Exchange policyholders, each individual
25 syndicate seeking to accept surplus line placements of
26 risks resident, located, or to be performed in this state
27 shall maintain minimum capital and surplus of not less
28 than six million four hundred thousand dollars
29 (\$6,400,000). Each individual syndicate shall increase the
30 capital and surplus required by this paragraph by one
31 million dollars (\$1,000,000) each year until it attains a
32 capital and surplus of fifteen million dollars (\$15,000,000).
33 In the case of *an* Insurance ~~Exchanges~~ *Exchange* that ~~do~~
34 *does* not maintain funds for the protection of all Insurance
35 Exchange policyholders, each individual syndicate
36 seeking to accept surplus line placement of risks resident,
37 located, or to be performed in this state shall meet the
38 capital and surplus requirements of subparagraph (A)—~~of~~
39 ~~this paragraph.~~

1 (C) In the case of a syndicate that is part of a group
2 consisting of incorporated individual insurers, or a
3 combination of both incorporated and unincorporated
4 insurers, that at all times maintains a trust fund of not less
5 than one hundred million dollars (\$100,000,000) in a
6 qualified United States financial institution as security to
7 the full amount thereof for the United States surplus line
8 policyholders and beneficiaries of direct policies of the
9 group, including all policyholders and beneficiaries of
10 direct policies of the syndicate, and the full balance in the
11 trust fund is available to satisfy the liabilities of each
12 member of the group of those syndicates, incorporated
13 individual insurers or other unincorporated insurers,
14 without regard to their individual contributions to that
15 trust fund, and the trust complies with the terms of and
16 conditions specified in paragraph (1) of subdivision (b),
17 the syndicate is excepted from the capital and surplus
18 requirements of subparagraph (A) ~~of paragraph (2)~~. The
19 incorporated members of the group shall not be engaged
20 in any business other than underwriting as a member of
21 the group and shall be subject to the same level of
22 solvency regulation and control by the group's
23 domiciliary regulator as are the unincorporated
24 members.

25 (b) (1) In addition, to be eligible as a surplus line
26 insurer, an insurer not domiciled in one of the United
27 States or its territories shall have in force in the United
28 States an irrevocable trust account in a qualified United
29 States financial institution, for the protection of United
30 States policyholders, of not less than five million four
31 hundred thousand dollars (\$5,400,000) and consisting of
32 cash, securities acceptable to the commissioner ~~which~~
33 *that* are authorized pursuant to Sections 1170 to 1182,
34 inclusive, readily marketable securities acceptable to the
35 commissioner that are listed on a regulated United States
36 national or principal regional security exchange, or clean
37 and irrevocable letters of credit acceptable to the
38 commissioner and issued by a qualified United States
39 financial institution. The trust agreement shall be in a
40 form acceptable to the commissioner. The funds in the

1 trust account may be included in any calculation of
2 capital and surplus, except letters of credit, which shall
3 not be included in any calculation.

4 (2) In the case of a syndicate seeking eligibility under
5 subparagraph (C) of paragraph (2) of subdivision (a); the
6 syndicate shall, in addition to the requirements of that
7 subparagraph, at a minimum, maintain in the United
8 States a trust account in an amount satisfactory to the
9 commissioner that is not less than the amount required by
10 the domiciliary state of the syndicate's trust. The trust
11 account shall comply with the terms and conditions
12 specified in paragraph (1) of subdivision (b).

13 (3) In the case of a group of incorporated insurers
14 under common administration that maintains a trust fund
15 of not less than one hundred million dollars
16 (\$100,000,000) in a qualified United States financial
17 institution for the payment of claims of its United States
18 policyholders, their assigns, or successors in interest and
19 that complies with the terms and conditions of paragraph
20 (1) that has continuously transacted an insurance
21 business outside the United States for at least three years,
22 that is in good standing with its domiciliary regulator,
23 whose individual insurer members maintain standards
24 and financial ~~condition~~ *conditions* reasonably
25 comparable to admitted insurers, that submits to this
26 state's authority to examine its books and bears the
27 expense of examination, and that has an aggregate
28 policyholder surplus of ten billion dollars
29 (\$10,000,000,000), the group is excepted from the capital
30 and surplus requirements of subdivision (a).

31 (c) Has caused to be provided to the commissioner the
32 following documents:

33 (1) The financial documents as specified below, each
34 showing the insurer's condition as of a date not more than
35 12 months prior to submission:

36 (A) A copy of an annual statement, prepared in the
37 form prescribed by the NAIC. For an alien insurer, in lieu
38 of an annual statement, a licensee may submit a form as
39 set forth by regulation and as prepared by the insurer,
40 and, if listed by the IID, a copy of the complete

1 information as required in the application for listing by
2 the IID.

3 (B) A copy of an audited financial report on the
4 insurer's condition that meets the standards of
5 subparagraph (D) for foreign insurers or subparagraph
6 (E) for alien insurers.

7 (C) If the insurer is an alien:

8 (i) A certified copy of the trust agreement referenced
9 in subdivision (b).

10 (ii) A verified copy of the most recent quarterly
11 statement or list of the assets in the trust.

12 (D) Financial reports filed pursuant to this section by
13 foreign insurers shall conform to the following standards:

14 (i) Financial documents shall be certified.

15 (ii) An audited financial report shall constitute a
16 supplement to the insurer's annual statement, as required
17 by the annual statement instructions issued by the NAIC.

18 (iii) An audited financial report shall be prepared by
19 an independent certified public accountant or
20 accounting firm in good standing with the American
21 Institute of Certified Public Accountants and in all states
22 where licensed to practice; and be prepared in
23 conformity with statutory accounting practices
24 prescribed, or otherwise permitted, by the insurance
25 regulator of the insurer's domiciliary jurisdiction.

26 (iv) An audited financial report shall include
27 information on the insurer's financial position as of the
28 end of the most recent calendar year, and the results of
29 its operations, cash-flows, and changes in capital and
30 surplus for the year then ended.

31 (v) An audited financial report shall be prepared in a
32 form and using language and groupings substantially the
33 same as the relevant sections of the insurer's annual
34 statement filed with its domiciliary jurisdiction, and
35 presenting comparatively the amounts as of December 31
36 of the most recent calendar year and the amounts as of
37 December 31 of the preceding year.

38 (E) Financial reports filed pursuant to this section by
39 alien insurers shall conform to the following standards:

(i) Except as provided in clause (ii) of subparagraph (C), financial documents should be certified, if certification of a financial document is not available, the document shall be verified.

(ii) Financial documents should be expressed in United States dollars, but may be expressed in another currency, if the exchange rate for the other currency as of the date of the document is also provided.

(iii) The responses provided pursuant to subparagraph (A) of paragraph (1) on the form submitted in lieu of an annual statement should follow the most recent ISI Guide to Alien Reporting Format, “Standard Definitions of Accounting Items.” Responses that do not agree with a standard definition shall be fully explained in the form.

(iv) An audited financial report shall be prepared by an independent licensed auditor in the insurer’s domiciliary jurisdiction or in any state.

(v) An audited financial report shall be prepared in accord with either (I) Generally Accepted Auditing Standards that prescribe Generally Accepted Accounting Principles, or (II) International Accounting Standards as published and revised from time to time by the International Auditing Guidelines published by the International Auditing Practice Committee of the International Federation of Accountants; and shall include financial statement notes and a summary of significant accounting practices.

(F) The commissioner may accept, in lieu of a document described above, any certified or verified financial or regulatory document, statement, or report if the commissioner finds that it possesses reliability and financial detail substantially equal to or greater than the document for which it is proposed to be a substitute.

(G) If one of the financial documents required to be submitted under subparagraphs (A) and (B) is dated within 12 months of submission, but the other document is not so dated, the licensee may use the outdated document if it is accompanied by a supplement. The supplement must meet the same requirements which

1 apply to the supplemented document, and must update
2 the outdated document to a date within the prescribed
3 time period, preferably to the same date as the
4 nonsupplemented document.

5 (2) A certified copy of the insurer's license issued by
6 its domiciliary jurisdiction, plus a certification of good
7 standing, certificate of compliance, or other equivalent
8 certificate, from either that jurisdiction or, if the
9 jurisdiction does not issue those certificates, from any
10 state where it is licensed.

11 (3) Information on the insurer's agent in California for
12 service of process, including the agent's full name and
13 address. The agent's address must include a street address
14 where the agent can be reached during normal business
15 hours.

16 (4) The complete street address, mailing address, and
17 telephone number of the insurer's principal place of
18 business.

19 (5) A certified or verified explanation, report, or other
20 statement, from the insurance regulatory office or official
21 of the insurer's domiciliary jurisdiction, concerning the
22 insurer's record regarding market conduct and consumer
23 complaints; or, if that information cannot be obtained
24 from that jurisdiction, then any other information that
25 the licensee can procure to demonstrate a good
26 reputation for payment of claims and treatment of
27 policyholders.

28 (6) A verified statement, from the insurer or licensee,
29 on whether the insurer or any affiliated entity is currently
30 known to be the subject of any order or proceeding
31 regarding conservation, liquidation, or other
32 receivership; or regarding revocation or suspension of a
33 license to transact insurance in any jurisdiction; or
34 otherwise seeking to stop the insurer from transacting
35 insurance in any jurisdiction. The statement shall identify
36 the proceeding by date, jurisdiction, and relief or sanction
37 sought; and shall attach a copy of the relevant order.

38 (7) A certified copy of the most recent report of
39 examination or an explanation if the report is not
40 available.

1 (d) (1) Has provided any additional information or
2 documentation required by the commissioner that is
3 relevant to the financial stability, reputation, and
4 integrity of the nonadmitted insurer. In making a
5 determination concerning financial stability, reputation,
6 and integrity of the nonadmitted insurer, the
7 commissioner shall consider any analysis, findings, or
8 conclusion made by the National Association of Insurance
9 Commissioners (NAIC) in its review of the insurer for
10 purposes of inclusion on or exclusion from the list of
11 authorized nonadmitted insurers maintained by the
12 NAIC. The commissioner may, but shall not be required
13 to, rely on, adopt, or otherwise accept any analyses,
14 findings, or conclusions of the NAIC, as the commissioner
15 deems appropriate. In the case of a syndicate seeking
16 eligibility under subparagraph (C) of paragraph (2) of
17 subdivision (a), the commissioner may, but shall not be
18 required to, rely on, adopt, or otherwise accept any
19 analyses, findings, or conclusions of any state, as the
20 commissioner deems appropriate, as long as that state, in
21 its method of regulation and review, meets the
22 requirements of paragraph (2).

23 (2) The regulatory body of the state shall regularly
24 receive and review the following: (A) an audited
25 financial statement of the syndicate, prepared by a
26 certified or chartered public accountant; (B) an opinion
27 of a qualified actuary with regard to the syndicate's
28 aggregate reserves for payment of losses or claims and
29 payment of expenses of adjustment or settlement of losses
30 or claims; (C) a certification from the qualified United
31 States financial institution that acts as the syndicate's
32 trustee, respecting the existence and value of the
33 syndicate's trust fund; and (D) information concerning
34 the syndicate's or its manager's operating history,
35 business plan, ownership and control, experience and
36 ability, together with any other pertinent factors, and any
37 information indicating that the syndicate or its manager
38 make reasonably prompt payment of claims in this state
39 or elsewhere. The regulatory body of the state shall have
40 the authority, either by law or through the operation of

1 a valid and enforceable agreement, to review the
2 syndicate's assets and liabilities and audit the syndicate's
3 trust account, and shall exercise that authority with a
4 frequency and in a manner satisfactory to the
5 commissioner.

6 (e) Has established that:

7 (1) All documents required by subdivisions (c) and
8 (d) have been filed. Each of the documents appear after
9 review to be complete, clear, comprehensible,
10 unambiguous, accurate, and consistent.

11 (2) The documents affirm that the insurer is not
12 subject in any jurisdiction to an order or proceeding that:

13 (A) Seeks to stop it from transacting insurance.

14 (B) Relates to conservation, liquidation, or other
15 receivership.

16 (C) Relates to revocation or suspension of its license.

17 (3) The documents affirm that the insurer has actively
18 transacted insurance for the three years immediately
19 preceding the filing made under this section, unless an
20 exemption is granted. As used in this paragraph, "insurer"
21 does not include a syndicate of underwriting entities. The
22 commissioner may grant an exemption if the licensee has
23 applied for exemption and demonstrates either of the
24 following:

25 (A) The insurer meets the condition for any exception
26 set forth in subdivision (a), (b), or (c) of Section 716.

27 (B) If the insurer has been actively transacting
28 insurance for at least 12 months, and the licensee
29 demonstrates that the exemption is warranted because
30 the insurer's current financial strength, operating history,
31 business plan, ownership and control, management
32 experience, and ability, together with any other
33 pertinent factors, make three years of active insurance
34 transaction unnecessary to establish sufficient reputation.

35 (4) The documents confirm that the insurer holds a
36 license to issue insurance policies (other than
37 reinsurance) to residents of the jurisdiction that granted
38 the license unless an exemption is granted. The
39 commissioner may grant an exemption if the licensee has
40 applied for an exemption and demonstrates that the

1 exemption is warranted because the insurer proposes to
2 issue in California only commercial coverage, and is
3 wholly owned and actually controlled by substantial and
4 knowledgeable business enterprises that are its
5 policyholders and that effectively govern the insurer's
6 destiny in furtherance of their own business objectives.

7 (5) The information filed pursuant to paragraph (5) of
8 subdivision (c) or otherwise filed with or available to the
9 commissioner, including reports received from
10 California policyholders, shall indicate that the insurer
11 makes reasonably prompt payment of claims in this state
12 or elsewhere.

13 (6) The information available to the commissioner
14 shall not indicate that the insurer offers in California a
15 licensee products or rates that violate any provision of this
16 code.

17 (f) Has been placed on the list of eligible surplus line
18 insurers by the commissioner. The commissioner shall
19 establish a list of all surplus line insurers that have met the
20 requirements of subdivisions (a) to (e), inclusive, and
21 shall publish a master list at least semiannually. Any
22 insurer receiving approval as an eligible surplus line
23 insurer shall be added by addendum to the list at the time
24 of approval, and shall be incorporated into the master list
25 at the next date of publication. If an insurer appears on
26 the most recent list, it shall be presumed that the insurer
27 is an eligible surplus line insurer, unless the commissioner
28 or his or her designee has mailed or causes to be mailed
29 notice to all surplus line brokers that the commissioner
30 has withdrawn the insurer's eligibility. Upon receipt of
31 notice, the surplus line broker shall make no further
32 placements with the insurer. Nothing in this subdivision
33 shall limit the commissioner's discretion to withdraw an
34 insurer's eligibility.

35 (g) (1) Except as provided by paragraph (2),
36 whenever the commissioner has reasonable cause to
37 believe, and determines after a public hearing, that any
38 insurer on the list established pursuant to subdivision (f),
39 (A) is in an unsound financial condition, (B) does not
40 meet the eligibility requirements under subdivisions (a)

1 to (e), inclusive, (C) has violated the laws of this state, or
2 (D) without justification, or with a frequency so as to
3 indicate a general business practice, delays the payment
4 of just claims, the commissioner may issue an order
5 removing the insurer from the list. Notice of hearing shall
6 be served upon the insurer or its agent for service of
7 process stating the time and place of the hearing and the
8 conduct, condition, or ground upon which the
9 commissioner would make his or her order. The hearing
10 shall occur not less than 20 days, nor more than 30 days
11 after notice is served upon the insurer or its agent for
12 service of process.

13 (2) If the commissioner determines that an insurer's
14 immediate removal from the list is necessary to protect
15 the public or an insured or prospective insured of the
16 insurer, or, in the case of an application by an insurer to
17 be placed on the list which is being denied by the
18 commissioner, the commissioner may issue an order
19 pursuant to paragraph (1) without prior notice and
20 hearing. At the time an order is served pursuant to this
21 paragraph to an insurer on the list, the commissioner shall
22 also issue and serve upon the insurer a statement of the
23 reasons that immediate removal is necessary. Any order
24 issued pursuant to this paragraph shall include a notice
25 stating the time and place of a hearing on the order,
26 which shall be not less than 20 days, nor more than 30 days
27 after the notice is served.

28 (3) Notwithstanding paragraphs (1) and (2), ~~in any~~
29 ~~case where~~ *if* the commissioner is basing a decision to
30 remove an insurer from the list, or deny an application to
31 be placed on the list, on the failure of the insurer or
32 applicant to comply with, meet or maintain any of the
33 objective criteria established by this section, or by
34 regulation adopted pursuant to this section, the
35 commissioner may so specify this fact in the order, and no
36 hearing shall be required to be held on the order.

37 (4) Notwithstanding paragraphs (1) and (2), the
38 commissioner may, without prior notice or hearing,
39 remove from the list established pursuant to subdivision
40 (f) any insurer that has failed or refused to timely provide

1 documents required by this section, or any regulations
2 adopted to implement this section. ~~In the case of removal~~
3 ~~pursuant to this paragraph, the~~ *The* commissioner shall
4 notify all surplus line brokers of ~~the action~~ *any removal*
5 *made pursuant to this paragraph.*

6 (h) In addition to any other statements or reports
7 required by this chapter, the commissioner may also
8 address to any licensee a written request for full and
9 complete information respecting the financial stability,
10 reputation and integrity of any nonadmitted insurer with
11 whom the licensee has dealt or proposes to deal in the
12 transaction of insurance business. The licensee so
13 addressed shall promptly furnish in written or printed
14 form so much of the information requested as he or she
15 can produce together with a signed statement identifying
16 the same and giving reasons for omissions, if any. After
17 due examination of the information and accompanying
18 statement, the commissioner may, if he or she believes it
19 to be in the public interest, order the licensee in writing
20 to place no further insurance business on property
21 located or operations conducted within or on the lives of
22 persons who are residents of this state with the
23 nonadmitted insurer on behalf of any person. Any
24 placement in the nonadmitted insurer made by a licensee
25 after receipt of that order is a violation of this chapter.
26 The commissioner may issue an order when documents
27 submitted pursuant to subdivisions (c) and (d) do not
28 meet the criteria of subdivisions (a) to (e), inclusive, or
29 when the commissioner obtains documents on an insurer
30 and the insurer does not meet the criteria of subdivisions
31 (a) to (e), inclusive.

32 (i) The commissioner shall require, at least annually,
33 the submission of records and statements as are
34 reasonably necessary to ensure that the requirements of
35 this section are maintained.

36 (j) The commissioner shall establish by regulation a
37 schedule of fees to cover costs of administering and
38 enforcing this chapter.

(k) (1) Insurance may be placed on a limited basis with insurers not on the list established pursuant to this section if all of the following conditions are met:

(A) The use of multiple insurers is necessary to obtain coverage for 100 percent of the risk.

(B) At least 80 percent of the risk is placed with admitted insurers or insurers that appear on the list of eligible nonadmitted insurers.

(C) The placing surplus line broker submits to the commissioner, or his or her designee, copies of all documentation relied upon by the surplus line broker to make the broker's determination that the financial stability, reputation, and integrity of the unlisted insurer or insurers, are adequate to safeguard the interest of the insured under the policy. This documentation, and any other documentation regarding the unlisted insurer requested by the commissioner, shall be submitted no more than 30 days after the insurance is placed with the unlisted insurer for the initial placement by that broker with the particular unlisted insurer, and annually thereafter for as long as the broker continues to make placements with the unlisted insurer pursuant to this paragraph.

(D) The insured has aggregate annual premiums for all risks other than workers' compensation or health coverage totaling no less than one hundred thousand dollars (\$100,000).

(2) Insurance may not be placed pursuant to paragraph (1) if any of the following applies:

(A) The unlisted insurer has for any reason been objected to by the commissioner pursuant to this section, removed from the list, or denied placement on the list.

(B) The insurance includes coverage for employer-sponsored medical, surgical, hospital, or other health or medical expense benefits payable to the employee by the insurer.

(C) The insurance is mandatory under the laws of the federal government, this state, or any political subdivision thereof, and includes any portion of limits of coverage mandated by those laws.

1 (D) The insured is a multiple employer welfare
2 arrangement, as defined in Section 1002(40)(A) of Title
3 29 of the United States Code, or any other arrangement
4 among two or more employers that are not under
5 common ownership or control, which is established or
6 maintained for the primary purpose of providing
7 insurance benefits to the employees of two or more
8 employers.

9 (E) Unlisted insurers represent a disproportionate
10 portion of the lower layers of the coverage.

11 (3) Nothing in this section is intended to alter any
12 duties of a surplus line broker pursuant to subdivision (b)
13 of Section 1765 or other laws of this state to safeguard the
14 interests of the insured under the policy in
15 recommending or placing insurance with a nonadmitted
16 insurer.

17 (4) Placements authorized by this subdivision are
18 intended to provide sophisticated insurance purchasers
19 with a means to obtain necessary commercial insurance
20 coverage from nonadmitted insurers not listed by the
21 commissioner in situations where it is not commercially
22 possible to fully obtain that coverage from either
23 admitted or listed insurers. This subdivision shall not be
24 deemed to permit surplus line brokers to place with
25 nonadmitted insurers common commercial or personal
26 line coverages for insureds that can be placed with
27 insurers that are admitted or listed pursuant to this
28 section, whether the insured is an individual insured, or
29 a group created primarily for the purpose of purchasing
30 insurance.

31 (I) As used in this section:

32 (1) "Certified" means an originally signed or sealed
33 statement, dated not more than 60 days before
34 submission, made by a public official or other person,
35 attached to a copy of a document, that attests that the
36 copy is a true copy of the original, and that the original is
37 in the custody of the person making the statement.

38 (2) "Domiciliary jurisdiction" means the state, nation,
39 or subdivision thereof under the laws of which an insurer
40 is incorporated or otherwise organized.

(3) “Domiciliary state of the syndicate’s trust” means the state in which the syndicate’s trust fund is principally maintained and administered for the benefit of the syndicate’s policyholders in the United States.

(4) “IID” means the International Insurers Department.

(5) “Insurer” means (unless the context indicates otherwise) “nonadmitted” insurers that are either “foreign” or “alien” insurers, as those terms are defined in Sections 25, 27, and 1580, and syndicates whose members consist of individual incorporated insurers who are not engaged in any business other than underwriting as a member of the group and individual unincorporated insurers, provided all the members are subject to the same level of solvency regulation and control by the group’s domiciliary regulator. The term “insurer” includes all nonadmitted insurers selling insurance to or through purchasing groups as defined in the Liability Risk Retention Act of 1986 (15 U.S.C. Sec. 3901 et seq.) and the California Risk Retention Act of 1990 (Chapter 1.5 (commencing with Section 125) of Part 1 of Division 1), except insurers that are risk retention groups as defined by those acts.

(6) “ISI” means Insurance Solvency International.

(7) “Licensee” means a surplus line broker as defined in Section 47.

(8) “NAIC” means the National Association of Insurance Commissioners or its successor organization.

(9) “NAIIO” means the Nonadmitted Alien Insurer Information Office of the NAIC or its successor office.

(10) “State” means any state of the United States, the District of Columbia, a commonwealth, or a territory.

(11) “Verified” means a document or copy accompanied by an originally signed statement, dated not more than 60 days before submission, from a responsible executive or official who has authority to provide the statement and knowledge whereof he or she speaks, attesting either under oath before a notary public, or under penalty of perjury under California law, that the assertions made in the document are true.

1 (m) With respect to a nonadmitted insurer that is
2 listed as an authorized surplus line insurer as of
3 December 31, 1994, pursuant to Sections 2174.1 to 2174.14,
4 inclusive, of Title 10 of the California Code of Regulations,
5 this section shall not be effective until the subsequent
6 expiration of the listing of that insurer. Nothing in the bill
7 that amended this section during the 1994 portion of the
8 1993–94 Regular Session is intended to repeal or imply
9 *that* there is not authority to adopt, or to have adopted,
10 or to continue in force, any regulation, or part thereof,
11 with respect to surplus line insurance ~~which~~ *that* is not
12 clearly inconsistent with it.

13 SEC. 121. Section 10095 of the Insurance Code is
14 amended to read:

15 10095. (a) Within 30 days following the effective date
16 of this chapter, the association shall submit to the
17 commissioner, for his or her review, a proposed plan of
18 operation, consistent with the provisions of this chapter,
19 creating an association consisting of all insurers licensed
20 to write and engaged in writing in this state, on a direct
21 basis, basic property insurance or any component thereof
22 in homeowners or other dwelling multiperil policies.
23 Every insurer so described shall be a member of the
24 association and shall remain a member as a condition of
25 its authority to transact those kinds of insurance in this
26 state.

27 (b) The proposed plan shall authorize the association
28 to assume and cede reinsurance on risks written by
29 insurers in conformity with the program.

30 (c) Under the plan, each insurer shall participate in
31 the writings, expenses, profits and losses of the association
32 in the proportion that its premiums written during the
33 second preceding calendar year bear to the aggregate
34 premiums written by all insurers in the program,
35 excluding that portion of the premiums written
36 attributable to the operation of the association. Premiums
37 written on a policy of basic residential earthquake
38 insurance issued by the California Earthquake Authority
39 pursuant to Section 10089.6 shall be attributed to the

1 insurer that writes the underlying policy of residential
2 property insurance.

3 (d) The plan shall provide for administration by a
4 governing committee under rules to be adopted by it
5 with the approval of the commissioner. Voting on
6 administrative questions of the association and facility
7 shall be weighted in accordance with each insurer's
8 premiums written during the second preceding calendar
9 year as disclosed in the reports filed by the insurer with
10 the commissioner.

11 (e) The plan shall provide for a plan to encourage
12 persons to secure basic property insurance through
13 normal channels from an admitted insurer or a licensed
14 surplus line broker by informing those persons what steps
15 they must take in order to secure the insurance through
16 normal channels.

17 (f) The plan shall be subject to the approval of the
18 commissioner and shall go into effect upon the tentative
19 approval of the commissioner. The commissioner may, at
20 any time, withdraw his or her tentative approval or he or
21 she may, at any time after he or she has given his or her
22 final approval, revoke that approval if he or she feels it is
23 necessary to carry out the purposes of the chapter. The
24 withdrawal or revocation of ~~such~~ *that* approval shall not
25 affect the validity of any policies executed prior to the
26 date of the withdrawal. If the commissioner disapproves
27 or withdraws or revokes his or her approval to all or any
28 part of the plan of operation, the association shall, within
29 30 days, submit for review an appropriately revised plan
30 or part thereof, and, if the association fails to do so, or if
31 the revised plan so filed is unacceptable, the
32 commissioner shall promulgate a plan of operation or part
33 thereof as he or she may deem necessary to carry out the
34 purpose of this chapter.

35 (g) The association may, on its own initiative or at the
36 request of the commissioner, amend the plan of
37 operation, subject to approval by the commissioner, who
38 shall have supervision of the inspection bureau, the
39 facility and the association. The commissioner or any
40 person designated by him or her, shall have the power of

1 visitation of and examination into the operation and free
2 access to all the books, records, files, papers, and
3 documents that relate to operation of the facility and
4 association, and may summon, qualify, and examine as
5 witnesses all persons having knowledge of those
6 operations, including officers, agents, or employees
7 thereof.

8 (h) Every insurer member of the plan shall provide to
9 applicants who are denied coverage the statewide
10 toll-free “800” number for the plan established pursuant
11 to Section 10095.5 for the purpose of obtaining
12 information and assistance in obtaining basic property
13 insurance.

14 SEC. 122. Section 10116.5 of the Insurance Code is
15 amended to read:

16 10116.5. (a) Every policy of disability insurance that
17 is issued, amended, delivered, or renewed in this state on
18 or after January 1, 1999, that provides hospital, medical,
19 or surgical expense coverage under an
20 employer-sponsored group plan for an employer subject
21 to COBRA, as defined in subdivision (e), or an employer
22 group for which the disability insurer is required to offer
23 Cal-COBRA coverage, as defined in subdivision (f),
24 including a carrier providing replacement coverage
25 under Section 10128.3, shall further offer the former
26 employee the opportunity to continue benefits as
27 required under subdivision (b), and shall further offer
28 the former spouse of an employee or former employee
29 the opportunity to continue benefits as required under
30 subdivision (c).

31 (b) (1) ~~In the event~~ *If* a former employee ~~who~~
32 worked for the employer for at least five years prior to the
33 date of termination of employment and ~~who~~ is 60 years of
34 age or older on the date employment ends is entitled to
35 and so elects to continue benefits under COBRA or
36 Cal-COBRA for himself or herself and for any spouse, the
37 employee or spouse may further continue benefits
38 beyond the date coverage under COBRA or Cal-COBRA
39 ends, as set forth in paragraph (2). Except as otherwise
40 specified in this section, continuation coverage shall be

1 under the same benefit terms and conditions as if the
2 continuation coverage under COBRA or Cal-COBRA had
3 remained in force. For the employee or spouse,
4 continuation coverage following the end of COBRA or
5 Cal-COBRA is subject to payment of premiums to the
6 insurer. Individuals ineligible for COBRA or Cal-COBRA
7 or who are eligible but have not elected or exhausted
8 continuation coverage under federal COBRA or
9 Cal-COBRA are not entitled to continuation coverage
10 under this section. Premiums for continuation coverage
11 under this section shall be billed by, and remitted to, the
12 insurer in accordance with subdivision (d). Failure to pay
13 the requisite premiums may result in termination of the
14 continuation coverage in accordance with the applicable
15 provisions in the insurer's group contract with the former
16 employer.

17 (2) The former employer shall notify the former
18 employee or spouse or both, or the former spouse of the
19 employee or former employee, of the availability of the
20 continuation benefits under this section in accordance
21 with Section 2800.2 of the Labor Code. To continue health
22 care coverage pursuant to this section, the individual shall
23 elect to do so by notifying the insurer in writing within 30
24 calendar days prior to the date continuation coverage
25 under COBRA or Cal-COBRA is scheduled to end. Every
26 disability insurer shall provide to the employer replacing
27 a group benefit plan policy issued by the insurer, or to the
28 employer's agent or broker representative, within 15 days
29 of any written request, information in possession of the
30 insurer reasonably required to administer the
31 requirements of Section 2800.2 of the Labor Code.

32 (3) The continuation coverage shall end automatically
33 on the earlier of (A) the date the individual reaches age
34 65, (B) the date the individual is covered under any group
35 health plan not maintained by the employer or any other
36 insurer or health care service plan, regardless of whether
37 that coverage is less valuable, (C) the date the individual
38 becomes entitled to Medicare under Title XVIII of the
39 Social Security Act, (D) for a spouse, five years from the
40 date on which continuation coverage under COBRA or

1 Cal-COBRA was scheduled to end for the spouse, or (E)
2 the date on which the former employer terminates its
3 group contract with the insurer and ceases to provide
4 coverage for any active employees through that insurer,
5 in which case the insurer shall notify the former
6 employee or spouse, or both, of the right to a conversion
7 policy.

8 (c) (1) If a former spouse of an employee or former
9 employee was covered as a qualified beneficiary under
10 COBRA or Cal-COBRA, the former spouse may further
11 continue benefits beyond the date coverage under
12 COBRA or Cal-COBRA ends, as set forth in paragraph (2)
13 of subdivision (b). Except as otherwise specified in this
14 section, continuation coverage shall be under the same
15 benefit terms and conditions as if the continuation
16 coverage under COBRA or Cal-COBRA had remained in
17 force. Continuation coverage following the end of
18 COBRA or Cal-COBRA is subject to payment of
19 premiums to the insurer. Premiums for continuation
20 coverage under this section shall be billed by, and
21 remitted to, the insurer in accordance with subdivision
22 (d). Failure to pay the requisite premiums may result in
23 termination of the continuation coverage in accordance
24 with the applicable provisions in the insurer's group
25 contract with the employer or former employer.

26 (2) The continuation coverage for the former spouse
27 shall end automatically on the earlier of (A) the date the
28 individual reaches 65 years of age, (B) the date the
29 individual is covered under any group health plan not
30 maintained by the employer or any other health care
31 service plan or insurer, regardless of whether that
32 coverage is less valuable, (C) the date the individual
33 becomes entitled to Medicare under Title XVIII of the
34 Social Security Act, (D) five years from the date on which
35 continuation coverage under COBRA or Cal-COBRA was
36 scheduled to end for the former spouse, or (E) the date
37 on which the employer or former employer terminates its
38 group contract with the insurer and ceases to provide
39 coverage for any active employees through that insurer,



1 in which case the insurer shall notify the former spouse
2 of the right to a conversion policy.

3 (d) (1) If the premium charged to the employer for
4 a specific employee or dependent eligible under this
5 section is adjusted for the age of the specific employee, or
6 eligible dependent, on other than a composite basis, the
7 rate for continuation coverage under this section shall not
8 exceed 102 percent of the premium charged by the
9 insurer to the employer for an employee of the same age
10 as the former employee electing continuation coverage
11 in the case of an individual who was eligible for COBRA,
12 and 110 percent in the case of an individual who was
13 eligible for Cal-COBRA. If the coverage continued is that
14 of a former spouse, the premium charged shall not exceed
15 102 percent of the premium charged by the plan to the
16 employer for an employee of the same age as the former
17 spouse selecting continuation coverage in the case of an
18 individual who was eligible for COBRA, and 110 percent
19 in the case of an individual who was eligible for
20 Cal-COBRA.

21 (2) If the premium charged to the employer for a
22 specific employee or dependent eligible under this
23 section is not adjusted for age of the specific employee, or
24 eligible dependent, then the rate for continuation
25 coverage under this section shall not exceed 213 percent
26 of the applicable current group rate. For purposes of this
27 section, the “applicable current group rate” means the
28 total premiums charged by the insurer for coverage for
29 the group, divided by the relevant number of covered
30 persons.

31 (3) However, in computing the premiums charged to
32 the specific employer group, the insurer shall not include
33 consideration of the specific medical care expenditures
34 for beneficiaries receiving continuation coverage
35 pursuant to this section.

36 (e) For purposes of this section, “COBRA” means
37 Section 4980B of Title 26 ~~of the United States Code,~~
38 Section 1161 ~~et seq. and following~~ of Title 29 ~~of the United~~
39 ~~States Code,~~ and Section 300bb of Title 42 of the United
40 States Code, as added by the Consolidated Omnibus

1 Budget Reconciliation Act of 1985—(~~Public Law~~ (P.L.
2 99-272), and as amended.

3 (f) For purposes of this section, “Cal-COBRA” means
4 the continuation coverage that must be offered pursuant
5 to Article 1.7 (commencing with Section 10128.50), or
6 Article 4.5 (commencing with Section 1366.20) of
7 Chapter 2.2 of Division 2 of the Health and Safety Code.

8 (g) For the purposes of this section, “former spouse”
9 means either an individual who is divorced from an
10 employee or former employee or an individual who was
11 married to an employee or former employee at the time
12 of the death of the employee or former employee.

13 (h) Every group benefit plan evidence of coverage
14 that is issued, amended, or renewed after January 1, 1999,
15 shall contain a description of the provisions and eligibility
16 requirements for the continuation coverage offered
17 pursuant to this section.

18 (i) This section shall take effect on January 1, 1999.

19 SEC. 123. Section 10194.8 of the Insurance Code is
20 amended to read:

21 10194.8. (a) No Medicare supplement insurer shall
22 deny or condition the issuance or effectiveness of
23 Medicare supplement coverage, nor discriminate in the
24 pricing of coverage, because of health status, claims
25 experience, receipt of health care or medical condition of
26 an applicant in the case of an application for a policy or
27 certificate that is submitted prior to or during the
28 six-month period beginning with the first day of the first
29 month in which an individual is both 65 years of age or
30 older and is enrolled for benefits under Medicare Part B.
31 This section shall not be construed as preventing the
32 exclusion of benefits for preexisting conditions as defined
33 in paragraph (1) of subdivision (a) of Section 10195,
34 except as provided for in paragraph (1) of subdivision
35 (b).

36 (b) (1) In determining whether an exclusion of
37 benefits for a preexisting condition may be applied to any
38 person during the open enrollment period provided in
39 this section, a Medicare supplement insurer shall credit
40 the time the person was covered under creditable

1 coverage, provided *that* the individual becomes eligible
2 for coverage under the Medicare supplement policy:

3 (A) Within 180 days of the termination of any
4 creditable coverage if the creditable coverage is offered
5 through employment or sponsored by an employer and
6 if the Medicare supplement insurance is offered through
7 succeeding employment or sponsored by a succeeding
8 employer, and is not in violation of the Medicare
9 Secondary Payer provision of Section 1862(b) of the
10 Social Security Act (42 U.S.C. Sec. 1395y(b)).

11 (B) In cases not covered by paragraph (1), within 30
12 days of the termination of any other qualifying prior
13 coverage.

14 (2) For purposes of this section, “creditable coverage”
15 means any of the following:

16 (A) Any individual or group policy, contract, or
17 program that is written or administered by a disability
18 insurer, health care service plan, fraternal benefits
19 society, self-insured employer plan, or any other entity, in
20 this state or elsewhere, and that arranges or provides
21 medical, hospital, and surgical coverage not designed to
22 supplement other private or governmental plans. The
23 term includes continuation or conversion coverage but
24 does not include accident only, credit, coverage for onsite
25 medical clinics, disability income, Medicare supplement,
26 long-term care insurance, dental coverage, vision
27 coverage, coverage issued as a supplement to liability
28 insurance, insurance arising out of a workers’
29 compensation or similar law, automobile medical
30 payment insurance, or insurance under which benefits
31 are payable with or without regard to fault and that is
32 statutorily required to be contained in any liability
33 insurance policy or equivalent self-insurance.

34 (B) The federal Medicare program pursuant to Title
35 XVIII of the Social Security Act.

36 (C) The medicaid program pursuant to Title XIX of
37 the Social Security Act.

38 (D) Any other publicly sponsored program, provided
39 in this state or elsewhere, of medical, hospital, and
40 surgical care.

1 (E) ~~10 U.S.C.A.~~ Chapter 55 (commencing with Section
2 1071) *of Title 10 of the United States Code* (Civilian
3 Health and Medical Program of the Uniformed Services
4 (CHAMPUS)).

5 (F) A medical care program of the Indian Health
6 Service or of a tribal organization.

7 (G) A state health benefits risk pool.

8 (H) A health plan offered under ~~5 U.S.C.A.~~ Chapter 89
9 (commencing with Section 8901) *of Title 5 of the United*
10 *States Code* (Federal Employees Health Benefits
11 Program (FEHBP)).

12 (I) A public health plan as defined in federal
13 regulations authorized by Section 2701(c)(1)(I) of the
14 Public Health Service Act, as amended by Public Law
15 104-191, the Health Insurance Portability and
16 Accountability Act of 1996.

17 (J) A health benefit plan under Section 5(e) of the
18 Peace Corps Act (~~22 U.S.C.A.~~ *U.S.C. Sec. 2504(e)*).

19 (K) Any other creditable coverage as defined by
20 ~~subdivision~~ *subsection* (c) of Section 2701 of Title XXVII
21 of the federal Public Health Services Act (42 U.S.C. Sec.
22 300gg(c)).

23 (c) An individual enrolled in Medicare Part B by
24 reason of disability will be entitled to open enrollment
25 described in this section for six months after he or she
26 reaches age 65. Every insurer shall make available to
27 every applicant qualified for open enrollment all policies
28 and certificates offered by that insurer at the time of
29 application. Insurers shall not discourage sales during the
30 open enrollment period by any means, including the
31 altering of the commission structure.

32 (d) An individual who is 65 years of age or older and
33 enrolled in Medicare Part B is entitled to open
34 enrollment described in this section for six months
35 following:

36 (1) Receipt of a notice of termination or, if no notice
37 is received, the effective date of termination, from any
38 employer-sponsored health plan including an
39 employer-sponsored retiree health plan. For purposes of
40 this section, “employer-sponsored retiree health plan”

1 includes any coverage for medical expenses that is
2 directly or indirectly sponsored or established by an
3 employer for employees or retirees, their spouses,
4 dependents, or other included insureds.

5 (2) Termination of health care services for a military
6 retiree or the retiree's ~~Medicare—eligible~~
7 *Medicare-eligible* spouse or dependent as a result of a
8 military base closure.

9 (e) An individual who is 65 years of age or older and
10 enrolled in Medicare Part B is entitled to open
11 enrollment described in this section if the individual was
12 covered under a policy, certificate, or contract providing
13 Medicare supplement coverage but that coverage
14 terminated because the individual established residence
15 at a location not served by the plan.

16 (f) An individual shall be entitled to an annual open
17 enrollment period lasting 30 days or more, commencing
18 with the individual's birthday, during which time that
19 person may purchase any Medicare supplement
20 coverage, with the exception of a Medicare Select policy,
21 that offers benefits equal to or lesser than those provided
22 by the previous coverage. During this open enrollment
23 period, no Medicare supplement insurer that falls under
24 this provision shall deny or condition the issuance or
25 effectiveness of Medicare supplement coverage, nor
26 discriminate in the pricing of coverage, because of health
27 status, claims experience, receipt of health care, or
28 medical condition of the individual if, at the time of the
29 open enrollment period, the individual is covered under
30 another Medicare supplement policy or contract. A
31 Medicare supplement insurer shall notify a policyholder
32 of his or her rights under this subdivision at least 30 and
33 no more than 60 days before the beginning of the open
34 enrollment period.

35 SEC. 124. Section 10232.8 of the Insurance Code is
36 amended to read:

37 10232.8. (a) In every long-term care policy or
38 certificate that is not intended to be a federally qualified
39 long-term care insurance contract and provides home
40 care benefits, the threshold establishing eligibility for

1 home care benefits shall be at least as permissive as a
2 provision that the insured will qualify if either one of two
3 criteria are met:

4 (1) Impairment in two out of seven activities of daily
5 living.

6 (2) Impairment of cognitive ability.

7 The policy or certificate may provide for lesser but not
8 greater eligibility criteria. The commissioner, at his or her
9 discretion, may approve other criteria or combinations of
10 criteria to be substituted, if the insurer demonstrates that
11 the interest of the insured is better served.

12 “Activities of daily living” in every policy or certificate
13 that is not intended to be a federally qualified long-term
14 care insurance contract and provides home care benefits
15 shall include eating, bathing, dressing, ambulating,
16 transferring, toileting, and continence; “impairment”
17 means that the insured needs human assistance, or needs
18 continual substantial supervision; and “impairment of
19 cognitive ability” means deterioration or loss of
20 intellectual capacity due to organic mental disease,
21 including Alzheimer’s disease or related illnesses, that
22 requires continual supervision to protect oneself or
23 others.

24 (b) In every long-term care policy approved or
25 certificate issued after the effective date of the act adding
26 this section, that is intended to be a federally qualified
27 long-term care insurance contract as described in
28 subdivision (a) of Section 10232.1, the threshold
29 establishing eligibility for home care benefits shall
30 provide that a chronically ill insured will qualify if either
31 one of two criteria are met or if a third criterion, as
32 provided by this subdivision, is met:

33 (1) Impairment in two out of six activities of daily
34 living.

35 (2) Impairment of cognitive ability.

36 Other criteria shall be used in establishing eligibility for
37 benefits if federal law or regulations allow other types of
38 disability to be used applicable to eligibility for benefits
39 under a long-term care insurance policy. If federal law or
40 regulations allow other types of disability to be used, the

1 commissioner shall promulgate emergency regulations to
2 add those other criteria as a third threshold to establish
3 eligibility for benefits. Insurers shall submit policies for
4 approval within 60 days of the effective date of the
5 regulations. With respect to policies previously approved,
6 the department is authorized to review only the changes
7 made to the policy. All new policies approved and
8 certificates issued after the effective date of the
9 regulation shall include the third criterion. No policy shall
10 be sold that does not include the third criterion after one
11 year beyond the effective date of the regulations. An
12 insured meeting this third criterion shall be eligible for
13 benefits regardless of whether the individual meets the
14 impairment requirements in paragraph (1) or (2)
15 regarding activities of daily living and cognitive ability.

16 (c) A licensed health care practitioner, independent
17 of the insurer, shall certify that the insured meets the
18 definition of “chronically ill individual” as defined under
19 Public Law 104-191. ~~In the event~~ If a health care
20 practitioner makes a determination, pursuant to this
21 section, that an insured does not meet the definition of
22 “chronically ill individual,” the insurer shall notify the
23 insured that the insured shall be entitled to a second
24 assessment by a licensed health care practitioner, upon
25 request, who shall personally examine the insured. The
26 requirement for a second assessment shall not apply if the
27 initial assessment was performed by a practitioner who
28 otherwise meets the requirements of this section and who
29 personally examined the insured. The assessments
30 conducted pursuant to this section shall be performed
31 promptly with the certification completed as quickly as
32 possible to ensure that an insured’s benefits are not
33 delayed. The written certification shall be renewed every
34 12 months. A licensed health care practitioner shall
35 develop a written plan of care after personally examining
36 the insured. The costs to have a licensed health care
37 practitioner certify that an insured meets, or continues to
38 meet, the definition of “chronically ill individual,” or to
39 prepare written plans of care shall not count against the
40 lifetime maximum of the policy or certificate. In order to



1 be considered “independent of the insurer,” a licensed
2 health care practitioner shall not be an employee of the
3 insurer and shall not be compensated in any manner that
4 is linked to the outcome of the certification. It is the intent
5 of this subdivision that the practitioner’s assessments be
6 unhindered by financial considerations. This subdivision
7 shall apply only to a policy or certificate intended to be
8 a federally qualified long-term *care* insurance contract.

9 (d) “Activities of daily living” in every policy or
10 certificate intended to be a federally qualified long-term
11 care insurance contract as provided by Public Law
12 104-191 shall include eating, bathing, dressing,
13 transferring, toileting, and continence; “impairment in
14 activities of daily living” means the insured needs
15 “substantial assistance” either in the form of “hands-on
16 assistance” or “standby assistance,” due to a loss of
17 functional capacity to perform the activity; “impairment
18 of cognitive ability” means the insured needs substantial
19 supervision due to severe cognitive impairment;
20 “licensed health care practitioner” means a physician,
21 registered nurse, licensed social worker, or other
22 individual whom the ~~Secretary of the United States~~
23 ~~Department~~ Secretary of the Treasury may prescribe by
24 regulation; and “plan of care” means a written
25 description of the insured’s needs and a specification of
26 the type, frequency, and providers of all formal and
27 informal long-term care services required by the insured,
28 and the cost, if any.

29 (e) Until the time that these definitions may be
30 superseded by federal law or regulation, the terms
31 “substantial assistance,” “hands-on assistance,” “standby
32 assistance,” “severe cognitive impairment,” and
33 “substantial supervision” shall be defined according to
34 the safe-harbor definitions contained in Internal Revenue
35 Service Notice 97-31, issued May 6, 1997.

36 (f) The definitions of “activities of daily living” to be
37 used in policies and certificates that are intended to be
38 federally qualified long-term care insurance shall be the
39 following until the time that these definitions may be
40 superseded by federal law or regulations:

1 (1) Eating, which shall mean feeding oneself by
2 getting food in the body from a receptacle (such as a
3 plate, cup, or table) or by a feeding tube or intravenously.

4 (2) Bathing, which shall mean washing oneself by
5 sponge bath or in either a tub or shower, including the act
6 of getting into or out of a tub or shower.

7 (3) Continence, which shall mean the ability to
8 maintain control of bowel and bladder function; or when
9 unable to maintain control of bowel or bladder function,
10 the ability to perform associated personal hygiene
11 (including caring for a catheter or colostomy bag).

12 (4) Dressing, which shall mean putting on and taking
13 off all items of clothing and any necessary braces,
14 fasteners, or artificial limbs.

15 (5) Toileting, which shall mean getting to and from
16 the toilet, getting on or off the toilet, and performing
17 associated personal hygiene.

18 (6) Transferring, which shall mean the ability to move
19 into or out of bed, a chair or wheelchair.

20 The commissioner may approve the use of definitions
21 of “activities of daily living” that differ from the verbatim
22 definitions of this subdivision if these definitions would
23 result in more policy or certificate holders qualifying for
24 long-term care benefits than would occur by the use of
25 the verbatim definitions of this subdivision. In addition,
26 the following definitions may be used without the
27 approval of the commissioner: (1) the verbatim
28 definitions of eating, bathing, dressing, toileting,
29 transferring, and continence in subdivision (g); or (2) the
30 verbatim definitions of eating, bathing, dressing,
31 toileting, and continence in this subdivision and a
32 substitute, verbatim definition of “transferring” as
33 follows: “transferring,” which shall mean the ability to
34 move into and out of a bed, a chair, or wheelchair, or
35 ability to walk or move around inside or outside the home,
36 regardless of the use of a cane, crutches, or braces.

37 The definitions to be used in policies and certificates for
38 impairment in activities of daily living, “impairment in
39 cognitive ability,” and any third eligibility criterion
40 adopted by regulation pursuant to subdivision (b); shall

1 be the verbatim definitions of these benefit eligibility
2 triggers allowed by federal regulations. In addition to the
3 verbatim definitions, the commissioner may approve
4 additional descriptive language to be added to the
5 definitions, if the additional language is (1) warranted
6 based on federal or state laws, federal or state regulations,
7 or other relevant federal decision, and (2) strictly limited
8 to that language which is necessary to ensure that the
9 definitions required by this section are not misleading to
10 the insured.

11 (g) The definitions of “activities of daily living” to be
12 used verbatim in policies and certificates that are not
13 intended to qualify for favorable tax treatment under
14 Public Law 104-191 shall be the following:

15 (1) Eating, which shall mean reaching for, picking up,
16 and grasping a utensil and cup; getting food on a utensil,
17 and bringing food, utensil, and cup to mouth;
18 manipulating food on plate; and cleaning face and hands
19 as necessary following meals.

20 (2) Bathing, which shall mean cleaning the body using
21 a tub, shower, or sponge bath, including getting a basin
22 of water, managing faucets, getting in and out of tub or
23 shower, and reaching head and body parts for soaping,
24 rinsing, and drying.

25 (3) Dressing, which shall mean putting on, taking off,
26 fastening, and unfastening garments and undergarments
27 and special devices such as back or leg braces, corsets,
28 elastic stockings or garments, and artificial limbs or
29 splints.

30 (4) Toileting, which shall mean getting on and off a
31 toilet or commode and emptying a commode, managing
32 clothing and wiping and cleaning the body after toileting,
33 and using and emptying a bedpan and urinal.

34 (5) Transferring, which shall mean moving from one
35 sitting or lying position to another sitting or lying position;
36 for example, from bed to or from a wheelchair or sofa,
37 coming to a standing position, or repositioning to
38 promote circulation and prevent skin breakdown.

39 (6) Continence, which shall mean the ability to control
40 bowel and bladder as well as use ostomy or catheter

1 receptacles, and apply diapers and disposable barrier
2 pads.

3 (7) Ambulating, which shall mean walking or moving
4 around inside or outside the home regardless of the use
5 of a cane, crutches, or braces.

6 SEC. 125. Section 10273.4 of the Insurance Code is
7 amended to read:

8 10273.4. All disability insurers writing, issuing, or
9 administering group health benefit plans shall make all of
10 these health benefit plans renewable with respect to the
11 policyholder, contractholder, or employer except—as
12 follows in case of the following:

13 (a) ~~For nonpayment~~—*Nonpayment* of the required
14 premiums by the policyholder, contractholder, or
15 employer.

16 (b) ~~For fraud~~—*Fraud* or other intentional
17 misrepresentation by the policyholder, contractholder,
18 or employer.

19 (c) ~~For noncompliance~~—*Noncompliance* with a
20 material health benefit plan contract provision.

21 (d) ~~If the~~—*The* insurer ceases to provide or arrange for
22 the provision of health care services for new group health
23 benefit plans in this state, provided, ~~however,~~ that the
24 following conditions are satisfied:

25 (1) Notice of the decision to cease writing, issuing, or
26 administering new or existing group health benefit plans
27 in ~~that~~ *this* state is provided to the commissioner and to
28 either the policyholder, contractholder, or employer at
29 least 180 days prior to discontinuation of that coverage.

30 (2) Group health benefit plans shall not be canceled
31 for 180 days after the date of the notice required under
32 paragraph (1) and for that business of a plan that remains
33 in force, any disability insurer that ceases to write, issue,
34 or administer new group health benefit plans shall
35 continue to be governed by this section with respect to
36 business conducted under this section.

37 (3) Except as ~~authorized~~ *provided* under subdivision
38 (h) of Section 10705, or unless the commissioner had
39 made a determination pursuant to ~~subdivision (q)~~ of
40 Section 10712, a disability insurer that ceases to write,

1 issue, or administer new group health benefit plans in this
2 state after the effective date of this section shall be
3 prohibited from writing, issuing, or administering new
4 group health benefit plans to employers in this state for
5 a period of five years from the date of notice to the
6 commissioner.

7 (e) ~~If a~~ *The* disability insurer withdraws a group health
8 benefit plan from the market; provided, that the plan
9 notifies all affected contractholders, policyholders, or
10 employers and the commissioner at least 90 days prior to
11 the discontinuation of the health benefit plans, and that
12 the insurer makes available to the contractholder,
13 policyholder, or employer all health benefit plans that it
14 makes available to new employer business without regard
15 to the claims experience of health-related factors of
16 insureds or individuals who may become eligible for the
17 coverage.

18 (f) For the purposes of this section, “health benefit
19 plan” shall have the same meaning as in subdivision (a)
20 of Section 10198.6 and Section 10198.61.

21 (g) For the purposes of this section, “eligible
22 employee” shall have the same meaning as in Section
23 10700, except that it applies to all health benefit plans
24 issued to employer groups of two or more employees.

25 SEC. 126. Section 10700 of the Insurance Code is
26 amended to read:

27 10700. As used in this chapter:

28 (a) “Agent or broker” means a person or entity
29 licensed under Chapter 5 (commencing with Section
30 1621) of Part 2 of Division 1.

31 (b) “Benefit plan design” means a specific health
32 coverage product issued by a carrier to small employers,
33 to trustees of associations that include small employers, or
34 to individuals if the coverage is offered through
35 employment or sponsored by an employer. It includes
36 services covered and the levels of copayment and
37 deductibles, and it may include the professional providers
38 who are to provide those services and the sites where
39 those services are to be provided. A benefit plan design
40 may also be an integrated system for the financing and

1 delivery of quality health care services which has
2 significant incentives for the covered individuals to use
3 the system.

4 (c) “Board” means the Major Risk Medical Insurance
5 Board.

6 (d) “Carrier” means any disability insurance company
7 or any other entity that writes, issues, or administers
8 health benefit plans that cover the employees of small
9 employers, regardless of the situs of the contract or
10 master policyholder. For the purposes of ~~Articles~~ *Article*
11 3 (commencing with Section 10719) and *Article* 4
12 (commencing with Section 10730), “carrier” also
13 includes health care service plans.

14 (e) “Dependent” means the spouse or child of an
15 eligible employee, subject to applicable terms of the
16 health benefit plan covering the employee, and includes
17 dependents of guaranteed association members if the
18 association elects to include dependents under its health
19 coverage at the same time it determines its membership
20 composition pursuant to subdivision (z).

21 (f) “Eligible employee” means either of the following:

22 (1) Any permanent employee who is actively engaged
23 on a full-time basis in the conduct of the business of the
24 small employer with a normal workweek of at least 30
25 hours, in the small employer’s regular place of business,
26 who has met any statutorily authorized applicable
27 waiting period requirements. The term includes sole
28 proprietors or partners of a partnership, if they are
29 actively engaged on a full-time basis in the small
30 employer’s business, and they are included as employees
31 under a health benefit plan of a small employer, but does
32 not include employees who work on a part-time,
33 temporary, or substitute basis. It includes any eligible
34 employee as defined in this paragraph who obtains
35 coverage through a guaranteed association. Employees of
36 employers purchasing through a guaranteed association
37 shall be deemed to be eligible employees if they would
38 otherwise meet the definition except for the number of
39 persons employed by the employer. A permanent
40 employee who works at least 20 hours but not more than

1 29 hours is deemed to be an eligible employee if all four
2 of the following apply:

3 (A) The employee otherwise meets the definition of
4 an eligible employee except for the number of hours
5 worked.

6 (B) The employer offers the employee health
7 coverage under a health benefit plan.

8 (C) All similarly situated individuals are offered
9 coverage under the health benefit plan.

10 (D) The employee must have worked at least 20 hours
11 per normal workweek for at least 50 percent of the weeks
12 in the previous calendar quarter. The insurer may
13 request any necessary information to document the hours
14 and time period in question, including, but not limited to,
15 payroll records and employee wage and tax filings.

16 (2) Any member of a guaranteed association as
17 defined in subdivision (z).

18 (g) “Enrollee” means an eligible employee or
19 dependent who receives health coverage through the
20 program from a participating carrier.

21 (h) “Financially impaired” means, ~~for the purposes of~~
22 ~~this chapter~~, a carrier that, on or after the effective date
23 of this chapter, is not insolvent and is either:

24 (1) Deemed by the commissioner to be potentially
25 unable to fulfill its contractual obligations.

26 (2) Placed under an order of rehabilitation or
27 conservation by a court of competent jurisdiction.

28 (i) “Fund” means the California Small Group
29 Reinsurance Fund.

30 (j) “Health benefit plan” means a policy or contract
31 written or administered by a carrier that arranges or
32 provides health care benefits for the covered eligible
33 employees of a small employer and their dependents. The
34 term does not include accident only, credit, disability
35 income, coverage of Medicare services pursuant to
36 contracts with the United States government, Medicare
37 supplement, long-term care insurance, dental, vision,
38 coverage issued as a supplement to liability insurance,
39 automobile medical payment insurance, or insurance
40 under which benefits are payable with or without regard

1 to fault and that is statutorily required to be contained in
2 any liability insurance policy or equivalent self-insurance.

3 (k) “In force business” means an existing health
4 benefit plan issued by the carrier to a small employer.

5 (l) “Late enrollee” means ~~an~~ *the following*:

6 (1) An eligible employee or dependent who has
7 declined health coverage under a health benefit plan
8 offered by a small employer at the time of the initial
9 enrollment period provided under the terms of the
10 health benefit plan, and who subsequently requests
11 enrollment in a health benefit plan of that small
12 employer, provided that the initial enrollment period
13 shall be a period of at least 30 days. ~~It also means any~~

14 (2) Any member of an association that is a guaranteed
15 association as well as any other person eligible to purchase
16 through the guaranteed association when that person has
17 failed to purchase coverage during the initial enrollment
18 period provided under the terms of the guaranteed
19 association’s health benefit plan and who subsequently
20 requests enrollment in the plan, provided that the initial
21 enrollment period shall be a period of at least 30 days.
22 However, an eligible employee, another person eligible
23 for coverage through a guaranteed association pursuant
24 to subdivision (z), or dependent shall not be considered
25 a late enrollee if: ~~(1)~~ *the following conditions are met*:

26 (A) The individual meets all of the following: ~~(A)~~
27 *criteria*:

28 (i) The individual was covered under another
29 employer health benefit plan or no share-of-cost
30 Medi-Cal coverage at the time the individual was eligible
31 to enroll; ~~(B)~~

32 (ii) The individual was certified at the time of the
33 initial enrollment that coverage under another employer
34 health benefit plan or no share-of-cost Medi-Cal coverage
35 was the reason for declining enrollment, provided that, if
36 the individual was covered under another employer
37 health plan, the individual was given the opportunity to
38 make the certification required by this subdivision and
39 was notified that failure to do so could result in later
40 treatment as a late enrollee; ~~(C)~~

1 (iii) *The individual* has lost or will lose coverage under
2 another employer health benefit plan as a result of
3 termination of employment of the individual or of a
4 person through whom the individual was covered as a
5 dependent, change in employment status of the
6 individual, or of a person through whom the individual
7 was covered as a dependent, the termination of the other
8 plan's coverage, cessation of an employer's contribution
9 toward an employee or dependent's coverage, death of
10 the person through whom the individual was covered as
11 a dependent, legal separation, divorce, or loss of no
12 share-of-cost Medi-Cal coverage; ~~and (D)~~

13 (iv) *The individual* requests enrollment within 30 days
14 after termination of coverage or employer contribution
15 toward coverage provided under another employer
16 health benefit plan; ~~(2) the~~

17 (B) *The individual* is employed by an employer who
18 offers multiple health benefit plans and the individual
19 elects a different plan during an open enrollment period;
20 ~~(3) a~~

21 (C) A court has ordered that coverage be provided for
22 a spouse or minor child under a covered employee's
23 health benefit plan; ~~(4) (A) in~~

24 (D) *In the case of an eligible employee as defined in*
25 *paragraph (1) of subdivision (f), the:*

26 (i) *The carrier cannot produce a written statement*
27 *from the employer stating that the individual or the*
28 *person through whom an individual was eligible to be*
29 *covered as a dependent, prior to declining coverage, was*
30 *provided with, and signed acknowledgment of, an*
31 *explicit written notice in boldface type specifying that*
32 *failure to elect coverage during the initial enrollment*
33 *period permits the carrier to impose, at the time of the*
34 *individual's later decision to elect coverage, an exclusion*
35 *from coverage for a period of 12 months as well as a*
36 *six-month preexisting condition exclusion unless the*
37 *individual meets the criteria specified in paragraph (1),*
38 *(2), or (3); (B) in the case of an eligible employee who*
39 *subparagraph (A), (B), or (C).*

1 (ii) *The employee is a guaranteed association*
 2 *member; and the plan cannot produce a written*
 3 *statement from the guaranteed association stating that*
 4 *the association sent a written notice in boldface type to all*
 5 *potentially eligible association members at their last*
 6 *known address prior to the initial enrollment period*
 7 *informing members that failure to elect coverage during*
 8 *the initial enrollment period permits the plan to impose,*
 9 *at the time of the member's later decision to elect*
 10 *coverage, an exclusion from coverage for a period of 12*
 11 *months as well as a six-month preexisting condition*
 12 *exclusion unless the member can demonstrate that he or*
 13 *she meets the requirements of—subparagraphs (A), (C),*
 14 *and (D) of paragraph (1) or paragraph (2) or (3); or (C)*
 15 *in clauses (i), (ii), or (iii) of subparagraph (A) or*
 16 *subparagraph (B) or (C).*

17 (E) *In the case of an employer or person who is not a*
 18 *member of an association, was eligible to purchase*
 19 *coverage through a guaranteed association, and did not*
 20 *do so, and would not be eligible to purchase guaranteed*
 21 *coverage unless purchased through a guaranteed*
 22 *association, the employer or person can demonstrate that*
 23 *he or she meets the requirements of—subparagraphs (A),*
 24 *(C), and (D) of paragraph (1), or paragraph (2) or (3)*
 25 *clauses (i), (ii), or (iii) of subparagraph (A) or*
 26 *subparagraph (B) or (C), or that he or she recently had*
 27 *a change in status that would make him or her eligible and*
 28 *that application for coverage was made within 30 days of*
 29 *the change; (5) the*

30 (F) *The individual is an employee or dependent who*
 31 *meets the criteria described in paragraph—(1)*
 32 *subparagraph (A) and was under a COBRA continuation*
 33 *provision and the coverage under that provision has been*
 34 *exhausted. For purposes of this section, the definition of*
 35 *“COBRA” set forth in subdivision (e) of Section 1373.62*
 36 *1373.621 of the Health and Safety Code shall apply; or (6)*
 37 *the*

38 (G) *The individual is a dependent of an enrolled*
 39 *eligible employee who has lost or will lose his or her no*

1 share-of-cost Medi-Cal coverage and requests enrollment
2 within 30 days after notification of this loss of coverage.

3 (m) “New business” means a health benefit plan
4 issued to a small employer that is not the carrier’s in force
5 business.

6 (n) “Participating carrier” means a carrier that has
7 entered into a contract with the program to provide
8 health benefits coverage under this part.

9 (o) “Plan of operation” means the plan of operation of
10 the fund, including articles, bylaws, and operating rules
11 adopted by the fund pursuant to Article 3 (commencing
12 with Section 10719).

13 (p) “Program” means the Health Insurance Plan of
14 California.

15 (q) “Preexisting condition provision” means a policy
16 provision that excludes coverage for charges or expenses
17 incurred during a specified period following the insured’s
18 effective date of coverage, as to a condition for which
19 medical advice, diagnosis, care, or treatment was
20 recommended or received during a specified period
21 immediately preceding the effective date of coverage.

22 (r) “Creditable coverage” means:

23 (1) Any individual or group policy, contract, or
24 program, that is written or administered by a disability
25 insurer, health care service plan, fraternal benefits
26 society, self-insured employer plan, or any other entity, in
27 this state or elsewhere, and that arranges or provides
28 medical, hospital, and surgical coverage not designed to
29 supplement other private or governmental plans. The
30 term includes continuation or conversion coverage but
31 does not include accident only, credit, coverage for onsite
32 medical clinics, disability income, Medicare supplement,
33 long-term care, dental, vision, coverage issued as a
34 supplement to liability insurance, insurance arising out of
35 a workers’ compensation or similar law, automobile
36 medical payment insurance, or insurance under which
37 benefits are payable with or without regard to fault and
38 that is statutorily required to be contained in any liability
39 insurance policy or equivalent self-insurance.

(2) The federal Medicare program pursuant to Title XVIII of the Social Security Act.

(3) The medicaid program pursuant to Title XIX of the Social Security Act.

(4) Any other publicly sponsored program, provided in this state or elsewhere, of medical, hospital, and surgical care.

(5) ~~10—U.S.C.A.~~ Chapter 55 (commencing with Section 1071) *of Title 10 of the United States Code* (Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)).

(6) A medical care program of the Indian Health Service or of a tribal organization.

(7) A state health benefits risk pool.

(8) A health plan offered under ~~5—U.S.C.A.~~ Chapter 89 (commencing with Section 8901) *of Title 5 of the United States Code* (Federal Employees Health Benefits Program (FEHBP)).

(9) A public health plan as defined in federal regulations authorized by Section 2701(c)(1)(I) of the Public Health Service Act, as amended by Public Law 104-191, the Health Insurance Portability and Accountability Act of 1996.

(10) A health benefit plan under Section 5(e) of the Peace Corps Act (~~22—U.S.C.A.~~ U.S.C. Sec. 2504(e)).

(11) Any other creditable coverage as defined by ~~subdivision~~ *subsection* (c) of Section 2701 of Title XXVII of the federal Public Health Services Act (42 U.S.C. Sec. 300gg(c)).

(s) “Rating period” means the period for which premium rates established by a carrier are in effect and shall be no less than six months.

(t) “Risk adjusted employee risk rate” means the rate determined for an eligible employee of a small employer in a particular risk category after applying the risk adjustment factor.

(u) “Risk adjustment factor” means the percent adjustment to be applied equally to each standard employee risk rate for a particular small employer, based upon any expected deviations from standard claims. This

1 factor may not be more than 120 percent or less than 80
2 percent until July 1, 1996. Effective July 1, 1996, this factor
3 may not be more than 110 percent or less than 90 percent.

4 (v) “Risk category” means the following
5 characteristics of an eligible employee: age, geographic
6 region, and family size of the employee, plus the benefit
7 plan design selected by the small employer.

8 (1) No more than the following age categories may be
9 used in determining premium rates:

10 Under 30

11 30–39

12 40–49

13 50–54

14 55–59

15 60–64

16 65 and over

17 However, for the ~~65-and-over~~ *65-and-over* age category,
18 separate premium rates may be specified depending
19 upon whether coverage under the health benefit plan
20 will be primary or secondary to benefits provided by the
21 federal Medicare program pursuant to Title XVIII of the
22 federal Social Security Act.

23 (2) Small employer carriers shall base rates to small
24 employers using no more than the following family size
25 categories:

26 (A) Single.

27 (B) Married couple.

28 (C) One adult and child or children.

29 (D) Married couple and child or children.

30 (3) (A) In determining rates for small employers, a
31 carrier that operates statewide shall use no more than
32 nine geographic regions in the state, *shall* have no region
33 smaller than an area in which the first three digits of all
34 its ZIP Codes are in common within a county, and shall
35 divide no county into more than two regions. Carriers
36 shall be deemed to be operating statewide if their
37 coverage area includes 90 percent or more of the state’s
38 population. Geographic regions established pursuant to
39 this section shall, as a group, cover the entire state, and
40 the area encompassed in a geographic region shall be

1 separate and distinct from areas encompassed in other
2 geographic regions. Geographic regions may be
3 noncontiguous.

4 (B) In determining rates for small employers, a carrier
5 that does not operate statewide shall use no more than the
6 number of geographic regions in the state than is
7 determined by the following formula: the population, as
8 determined in the last federal census, of all counties
9 ~~which~~ *that* are included in their entirety in a carrier's
10 service area divided by the total population of the state,
11 as determined in the last federal census, multiplied by
12 ~~nine~~ 9. The resulting number shall be rounded to the
13 nearest whole integer. No region may be smaller than an
14 area in which the first three digits of all its ZIP Codes are
15 in common within a county and no county may be divided
16 into more than two regions. The area encompassed in a
17 geographic region shall be separate and distinct from
18 areas encompassed in other geographic regions.
19 Geographic regions may be noncontiguous. No carrier
20 shall have less than one geographic area.

21 (w) "Small employer" means either of the following:

22 (1) Any person, proprietary or nonprofit firm,
23 corporation, partnership, public agency, or association
24 that is actively engaged in business or service that, on at
25 least 50 percent of its working days during the preceding
26 calendar quarter, or preceding calendar year, employed
27 at least ~~two~~ 2, but not more than 50, eligible employees,
28 the majority of whom were employed within this state,
29 that was not formed primarily for purposes of buying
30 health insurance and in which a bona fide
31 employer-employee relationship exists. In determining
32 whether to apply the calendar quarter or calendar year
33 test, the insurer shall use the test that ensures eligibility
34 if only one test would establish eligibility. However, for
35 purposes of subdivisions (b) and (h) of Section 10705, the
36 definition shall include employers with at least three
37 eligible employees until July 1, 1997, and two eligible
38 employees thereafter. In determining the number of
39 eligible employees, companies that are affiliated
40 companies and that are eligible to file a combined income

1 tax return for purposes of state taxation shall be
2 considered one employer. Subsequent to the issuance of
3 a health benefit plan to a small employer pursuant to this
4 chapter, and for the purpose of determining eligibility,
5 the size of a small employer shall be determined annually.
6 Except as otherwise specifically provided, provisions of
7 this chapter that apply to a small employer shall continue
8 to apply until the health benefit plan anniversary
9 following the date the employer no longer meets the
10 requirements of this definition. It includes any small
11 employer as defined in this paragraph who purchases
12 coverage through a guaranteed association, and any
13 employer purchasing coverage for employees through a
14 guaranteed association.

15 (2) Any guaranteed association, as defined in
16 subdivision (y), that purchases health coverage for
17 members of the association.

18 (x) “Standard employee risk rate” means the rate
19 applicable to an eligible employee in a particular risk
20 category in a small employer group.

21 (y) “Guaranteed association” means a nonprofit
22 organization ~~comprised~~ *consisting* of a group of
23 individuals or employers who associate based solely on
24 participation in a specified profession or industry,
25 accepting for membership any individual or employer
26 meeting its membership criteria ~~which~~ *that* (1) includes
27 one or more small employers as defined in paragraph (1)
28 of subdivision (w), (2) does not condition membership
29 directly or indirectly on the health or claims history of any
30 person, (3) uses membership dues solely for and in
31 consideration of the membership and membership
32 benefits, except that the amount of the dues shall not
33 depend on whether the member applies for or purchases
34 insurance offered by the association, (4) is organized and
35 maintained in good faith for purposes unrelated to
36 insurance, (5) has been in active existence on January 1,
37 1992, and for at least five years prior to that date, (6) has
38 been offering health insurance to its members for at least
39 five years prior to January 1, 1992, (7) has a constitution
40 and bylaws, or other analogous governing documents that

1 provide for election of the governing board of the
2 association by its members, (8) offers any benefit plan
3 design that is purchased to all individual members and
4 employer members in this state, (9) includes any
5 member choosing to enroll in the benefit plan design
6 offered to the association, provided that the member has
7 agreed to make the required premium payments, and
8 (10) covers at least 1,000 persons with the carrier with
9 which it contracts. The requirement of 1,000 persons may
10 be met if component chapters of a statewide association
11 contracting separately with the same carrier cover at
12 least 1,000 persons in the aggregate.

13 This subdivision applies regardless of whether a master
14 policy by an admitted insurer is delivered directly to the
15 association or a trust formed for or sponsored by an
16 association to administer benefits for association
17 members.

18 For purposes of this subdivision, an association formed
19 by a merger of two or more associations after January 1,
20 1992, and otherwise meeting the criteria of this
21 subdivision shall be deemed to have been in active
22 existence on January 1, 1992, if its predecessor
23 organizations had been in active existence on January 1,
24 1992, and for at least five years prior to that date and
25 otherwise met the criteria of this subdivision.

26 (z) "Members of a guaranteed association" means any
27 individual or employer meeting the association's
28 membership criteria if that person is a member of the
29 association and chooses to purchase health coverage
30 through the association. At the association's discretion, it
31 may also include employees of association members,
32 association staff, retired members, retired employees of
33 members, and surviving spouses and dependents of
34 deceased members. However, if an association chooses to
35 include those persons as members of the guaranteed
36 association, the association must so elect in advance of
37 purchasing coverage from a plan. Health plans may
38 require an association to adhere to the membership
39 composition it selects for up to 12 months.

1 (aa) “Affiliation period” means a period that, under
2 the terms of the health benefit plan, must expire before
3 health care services under the plan become effective.

4 SEC. 127. Section 10841 of the Insurance Code is
5 amended to read:

6 10841. (a) A purchasing alliance shall comply with all
7 requirements pertaining to the underwriting, rating and
8 renewal practices for small employers, pursuant to
9 subdivisions (a) and (b) of Section 1357.12 of ~~the Health~~
10 ~~and Safety Code and subdivisions (a) and (b) of Section~~
11 ~~10714~~, and subdivision (f) of Section 1357.03 of, the Health
12 and Safety Code, *and subdivisions (a) and (b) of Section*
13 *10714*.

14 (b) A purchasing alliance shall comply with all
15 requirements pertaining to the marketing practices for
16 small employers who participate in the purchasing
17 alliance, pursuant to subdivision (d) of Section 1357.03 of
18 the Health and Safety Code and subdivisions (f) and (j)
19 of Section 10705.

20 (c) A purchasing alliance shall comply with all
21 requirements pertaining to the participation
22 requirements for small employers who participate in the
23 purchasing alliance, pursuant to subdivision (b) of
24 Section 1357.03 of the Health and Safety Code and Section
25 10706. A carrier participating in a purchasing alliance
26 shall be deemed to be in compliance with this
27 requirement.

28 SEC. 128. Section 12963.96 of the Insurance Code is
29 amended and renumbered to read:

30 ~~12963.96.~~

31 *12693.96.* (a) There is hereby created in the State
32 Treasury the Healthy Families Fund, which is,
33 notwithstanding Section 13340 of the Government Code,
34 continuously appropriated to the board for the purposes
35 specified in this part.

36 (b) The board shall authorize the expenditure, from
37 the fund, of any state funds, federal funds, or family
38 contributions deposited into the fund. ~~—This shall include~~
39 ~~the authority for the board to~~ *The board may* authorize
40 the State Department of Health Services to transfer funds

1 appropriated to the department for the program to the
2 Healthy Families Fund, and to also deposit those funds in,
3 and to disburse those funds from, the Healthy Families
4 Fund.

5 (c) Notwithstanding any other provision of law, this
6 part shall be implemented only if, and to the extent that,
7 as provided under Title XXI of the Social Security Act,
8 federal financial participation is available and state plan
9 approval is obtained.

10 (d) Nothing in this part is intended to establish an
11 entitlement for individual coverage.

12 SEC. 129. Section 12963.97 of the Insurance Code is
13 amended and renumbered to read:

14 ~~12963.97.~~

15 ~~12693.97.~~ The State Department of Health Services
16 and the board may explore and utilize any options
17 available under federal law to allow the use of charitable
18 funding as a match for federal funds for use in the
19 provision of coverage by private and public not-for-profit
20 organizations consistent with the provisions of this part.

21 SEC. 130. Section 138.4 of the Labor Code is amended
22 to read:

23 138.4. The administrative director shall, with respect
24 to injuries involving loss of time:

25 (a) Prescribe reasonable rules and regulations for the
26 serving on the employee of notices dealing with the
27 payment, nonpayment or delay in payment of temporary
28 disability, permanent disability, and death benefits and
29 the provision of vocational rehabilitation services, with
30 copies to the administrative director. A pamphlet
31 published or approved by the administrative director,
32 meeting the criteria specified in subdivision ~~(b)~~ (a) of
33 Section 139.6, shall be included with the first notice of
34 payment or notice of delay in payment served on each
35 injured employee.

36 (b) Prescribe reasonable rules and regulations for
37 providing the employee notice of any change in the
38 amount or type of benefits being provided, the
39 termination of benefits, and an accounting of the benefits
40 paid, with copies to the administrative director.

1 (c) Prescribe reasonable rules and regulations for
2 serving on the employee notice of rejection of any
3 liability for compensation and the remedies available to
4 the employee, and the employee's right to seek
5 information and advice from an information and
6 assistance officer or an attorney.

7 SEC. 131. Section 201.5 of the Labor Code is amended
8 to read:

9 201.5. An employer who lays off an employee
10 engaged in the production of motion pictures, whose
11 unusual or uncertain terms of employment require
12 special computation in order to ascertain the amount due,
13 shall be deemed to have made immediate payment of
14 wages within the meaning of Section 201 if the wages of
15 the employee are paid by the next regular payday, as
16 prescribed by Section 204, following the layoff. For
17 purposes of this section, "layoff" means the termination
18 of employment of an employee where the employee
19 retains eligibility for reemployment with the employer.
20 For purposes of this section, "discharge" means the
21 unconditional termination of employment of an
22 employee. However, if an employee is discharged,
23 payment of wages shall be made within 24 hours after
24 discharge, excluding Saturdays, Sundays, and holidays.
25 For purposes of this section, a payment required by this
26 section may be mailed and the date of mailing is the date
27 of payment.

28 The Legislature finds and determines that special
29 provision must be made for the payment of wages on
30 layoff and discharge of persons engaged in the production
31 of motion pictures because their employment at various
32 locations is often far removed from the employer's
33 principal administrative offices and the unusual hours of
34 their employment in this industry is often geared to the
35 completion of a portion of a picture, which time of
36 completion may have no relation to normal working
37 hours.

38 SEC. 132. Section 1771.5 of the Labor Code is
39 amended to read:

1 1771.5. (a) ~~Notwithstanding~~ *Notwithstanding*
2 Section 1771, an awarding body shall not require the
3 payment of the general prevailing rate of per diem wages
4 or the general prevailing rate of per diem wages for
5 holiday and overtime work for any public works project
6 of twenty-five thousand dollars (\$25,000) or less when the
7 project is for construction work, or for any public works
8 project of fifteen thousand dollars (\$15,000) or less when
9 the project is for alteration, demolition, repair, or
10 maintenance work, if the awarding body elects to initiate
11 and enforce a labor compliance program pursuant to
12 subdivision (b) for every public works project under the
13 authority of the awarding body.

14 (b) For the purposes of this section, a labor compliance
15 program shall include, but not be limited to, the following
16 requirements:

17 (1) All bid invitations and public works contracts shall
18 contain appropriate language concerning the
19 requirements of this chapter.

20 (2) A prejob conference shall be conducted with the
21 contractor and subcontractors to discuss federal and state
22 labor law requirements applicable to the contract.

23 (3) Project contractors and subcontractors shall
24 maintain and furnish, at a designated time, a certified
25 copy of each weekly payroll containing a statement of
26 compliance signed under penalty of perjury.

27 (4) The awarding body shall review, and, if
28 appropriate, audit payroll records to verify compliance
29 with this chapter.

30 (5) The awarding body shall withhold contract
31 payments when payroll records are delinquent or
32 inadequate.

33 (6) The awarding body shall withhold contract
34 payments equal to the amount of underpayment and
35 applicable penalties when, after investigation, it is
36 established that underpayment has occurred.

37 SEC. 133. Section 3716.2 of the Labor Code is
38 amended to read:

39 3716.2. Notwithstanding the precise elements of an
40 award of compensation benefits, and notwithstanding the

1 claim and demand for payment being made therefor to
2 the director, the director, as administrator of the
3 Uninsured Employers Fund, shall pay the claimant only
4 such benefits allowed, recognizing proper liens thereon,
5 that would have accrued against an employer properly
6 insured for workers' compensation liability. The
7 Uninsured Employers Fund shall not be liable for any
8 penalties or for the payment of interest on any awards.
9 However, in civil suits by the director to enforce payment
10 of an award, including procedures pursuant to Section
11 3717, the total amount of the award, including interest,
12 other penalties, and ~~attorney~~ *attorney's* fees granted by
13 the award, shall be sought. Recovery, by the director, in
14 a civil suit, or *by* other means, of awarded benefits in
15 excess of amounts paid *to* the claimant by the Uninsured
16 Employers Fund, shall be paid over to the injured
17 employee, or his representative, as the case may be.

18 SEC. 134. Section 4707 of the Labor Code is amended
19 to read:

20 4707. (a) Except as provided in subdivision (b), no
21 benefits, except reasonable expenses of burial not
22 exceeding one thousand dollars (\$1,000), shall be
23 awarded under this division on account of the death of an
24 employee who is an active member of the Public
25 Employees' Retirement System unless it is determined
26 that a special death benefit, as defined in the Public
27 Employees' Retirement Law, or the benefit provided in
28 lieu of the special death benefit in ~~Section 21365.6~~
29 *Sections 21547 and 21548* of the Government Code, will
30 not be paid by the Public Employees' Retirement System
31 to the surviving spouse or children under 18 years of age,
32 of the deceased, on account of the death, but if the total
33 death allowance paid to the surviving spouse and children
34 is less than the benefit otherwise payable under this
35 division the surviving spouse and children are entitled,
36 under this division, to the difference.

37 The amendments to this section during the 1977-78
38 Regular Session shall be applied retroactively to July 1,
39 1976.

1 (b) The limitation prescribed by subdivision (a) shall
2 not apply to local safety members, or patrol members, as
3 defined in Section 20390 of the Government Code, of the
4 Public Employees' Retirement System.

5 SEC. 135. Section 5433 of the Labor Code is amended
6 to read:

7 5433. (a) Any advertisement or other device
8 designed to produce leads based on a response from a
9 person to file a workers' compensation claim or to engage
10 or consult counsel or a medical care provider or clinic
11 shall disclose that an agent may contact the individual if
12 that is the fact. In addition, an individual who makes
13 contact with a person as a result of acquiring that
14 individual's name from a lead generating device shall
15 disclose that fact in the initial contact with that person.

16 (b) No person shall solicit persons to file a workers'
17 compensation claim or to engage or consult counsel or a
18 medical care provider or clinic to consider a workers'
19 compensation claim through the use of a true or fictitious
20 name which is deceptive or misleading with regard to the
21 status, character, or proprietary or representative
22 capacity of the entity or person, or to the true purpose of
23 the advertisement.

24 (c) For purposes of this section, an advertisement
25 includes a solicitation in any newspaper, magazine,
26 circular, form letter, or open publication, published,
27 distributed, or circulated in this state, or on any billboard,
28 card, label, transit advertisement, or other written
29 advertising medium, and includes envelopes, stationery,
30 business cards, or other material designed to encourage
31 the filing of a workers' compensation claim.

32 (d) Advertisements shall not employ words, initials,
33 letters, symbols, or other devices which are so similar to
34 those used by governmental agencies, a nonprofit or
35 charitable institution, or other entity that they could have
36 the capacity or tendency to mislead the public. Examples
37 of misleading materials include, but are not limited to,
38 those that imply any of the following:

1 (1) The ~~advertiser~~ *advertisement* is in some way
2 provided by or is endorsed by a governmental agency or
3 charitable institution.

4 (2) The ~~advertisement~~ *advertiser* is the same as, is
5 connected with, or *is* endorsed by a governmental agency
6 or charitable institution.

7 (e) Advertisements may not use the name of a state or
8 political subdivision thereof in an advertising solicitation.

9 (f) Advertisements may not use any name, service
10 mark, slogan, symbol, or any device in any manner which
11 implies that the advertiser, or any person or entity
12 associated with the advertiser, or that any agency who
13 may call upon the person in response to the
14 advertisement, is connected with a governmental
15 agency.

16 (g) Advertisements may not imply that the reader,
17 listener, or viewer may lose a right or privilege or benefits
18 under federal, state, or local law if he or she fails to
19 respond to the advertisement.

20 SEC. 136. Section 136.2 of the Penal Code is amended
21 to read:

22 136.2. Upon a good cause belief that harm to, or
23 intimidation or dissuasion of, a victim or witness has
24 occurred or is reasonably likely to occur, any court with
25 jurisdiction over a criminal matter may issue orders
26 including, but not limited to, the following:

27 (a) Any order issued pursuant to Section 6320 of the
28 Family Code.

29 (b) An order that a defendant shall not violate any
30 provision of Section 136.1.

31 (c) An order that a person before the court other than
32 a defendant, including, but not limited to, a subpoenaed
33 witness or other person entering the courtroom of the
34 court, shall not violate any provisions of Section 136.1.

35 (d) An order that any person described in this section
36 shall have no communication whatsoever with any
37 specified witness or any victim, except through an
38 attorney under any reasonable restrictions that the court
39 may impose.

1 (e) An order calling for a hearing to determine if an
2 order as described in subdivisions (a) to (d), inclusive,
3 should be issued.

4 (f) An order that a particular law enforcement agency
5 within the jurisdiction of the court provide protection for
6 a victim or a witness, or both, or for immediate family
7 members of a victim or a witness who reside in the same
8 household as the victim or witness or within reasonable
9 proximity of the victim's or ~~witness's~~ *witness'* household,
10 as determined by the court. The order shall not be made
11 without the consent of the law enforcement agency
12 except for limited and specified periods of time and upon
13 an express finding by the court of a clear and present
14 danger of harm to the victim or witness or immediate
15 family members of the victim or witness.

16 For purposes of this subdivision, "immediate family
17 members" include the spouse, children, or parents of the
18 victim or witness.

19 (g) Any order protecting victims of violent crime from
20 contact, with the intent to annoy, harass, threaten, or
21 commit acts of violence, by the defendant. The court or
22 its designee shall transmit orders made under this
23 subdivision to law enforcement personnel within one
24 business day of the issuance of the order, pursuant to
25 subdivision (a) of Section 6380 of the Family Code.

26 Any person violating any order made pursuant to
27 subdivisions (a) to (g), inclusive, may be punished for any
28 substantive offense described in Section 136.1, or for a
29 contempt of the court making the order. A finding of
30 contempt shall not be a bar to prosecution for a violation
31 of Section 136.1. However, any person so held in
32 contempt shall be entitled to credit for any punishment
33 imposed therein against any sentence imposed upon
34 conviction of an offense described in Section 136.1. Any
35 conviction or acquittal for any substantive offense under
36 Section 136.1 shall be a bar to a subsequent punishment
37 for contempt arising out of the same act.

38 (h) (1) In all cases where the defendant is charged
39 with a crime of domestic violence, as defined in Section
40 13700, the court shall consider issuing the

1 above-described orders on its own motion. All interested
2 parties shall receive a copy of those orders. In order to
3 facilitate this, the court's records of all criminal cases
4 involving domestic violence shall be marked to clearly
5 alert the court to this issue.

6 (2) In those cases in which a complaint, information,
7 or indictment charging a crime of domestic violence, as
8 defined in Section 13700, has been issued, a restraining
9 order or protective order against the defendant issued by
10 the criminal court in that case has precedence over any
11 other outstanding court order against the defendant.

12 (i) The Judicial Council shall adopt forms for orders
13 under this section.

14 SEC. 137. Section 148.10 of the Penal Code is
15 amended to read:

16 148.10. (a) Every person who willfully resists a peace
17 officer in the discharge or attempt to discharge any duty
18 of his or her office or employment and ~~the~~ whose willful
19 resistance ~~of the person~~ proximately causes death or
20 serious bodily injury to a peace officer, shall be punished
21 by imprisonment in the state prison for two, three, or four
22 years, or by a fine of not less than one thousand dollars
23 (\$1,000) or more than ten thousand dollars (\$10,000), or
24 by both ~~the~~ that fine and imprisonment, or by
25 imprisonment in a county jail for not more than one year,
26 or by a fine of not more than one thousand dollars
27 (\$1,000), or by both ~~the~~ that fine and imprisonment.

28 (b) For purposes of subdivision (a), the following facts
29 shall be found by the trier of fact:

30 (1) That the peace officer's action was reasonable
31 based on the facts or circumstances confronting the
32 officer at the time.

33 (2) That the detention and arrest was lawful and there
34 existed probable cause or reasonable cause to detain.

35 (3) That the person who willfully resisted; any peace
36 officer knew or reasonably should have known that the
37 other person was a peace officer engaged in the
38 performance of his or her duties.

(c) This section ~~shall~~ *does* not apply to conduct ~~which~~ *that* occurs during labor picketing, demonstrations, or disturbing the peace.

(d) For purposes of this section, “serious bodily injury” is defined in paragraph (4) of subdivision (f) of Section 243.

SEC. 138. Section 290 of the Penal Code is amended to read:

290. (a) (1) (A) Every person described in paragraph (2), for the rest of his or her life while residing in, or, if he or she has no residence, while located within, California, shall be required to register ~~with, within five working days of coming into, or changing his or her residence in, or location within, any city, county, or city and county, or campus in which he or she temporarily resides, or in which he or she is located if he or she has no residence, as follows:~~

(i) ~~With the chief of police of the city in which either he or she is residing, or within which he or she is located if he or she has no residence, is located, or~~

(ii) ~~In an unincorporated area or city that has no police department, with the sheriff of the county if he or she is residing, or within which he or she is located if he or she has no residence, is located, in an unincorporated area or city that has no police department, and, additionally,~~

(iii) ~~In addition to clause (i) or (ii), with the chief of police of a campus of the University of California, the California State University, or community college if at which he or she is residing, or within which he or she is located, including within any of the facilities of the campus, if he or she has no residence, is located upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence or location within, any city, county, or city and county, or campus in which he or she temporarily resides, or, if he or she has no residence, is located.~~

(B) If the person who is registering has no residence address, he or she shall update his or her registration no less than once every 90 days in addition to the requirement in subparagraph (A), on a form as may be

1 required by the Department of Justice, with the entity or
2 entities described in subparagraph (A) in whose
3 jurisdiction he or she is located at the time he or she is
4 updating the registration.

5 (C) Beginning on his or her first birthday following
6 registration or change of address, the person shall be
7 required to register annually, within five working days of
8 his or her birthday, to update his or her registration with
9 the entities described in subparagraph (A), including,
10 verifying his or her name and address, or temporary
11 location, on a form as may be required by the
12 Department of Justice.

13 (D) In addition, every person who is a sexually violent
14 predator, as defined in Section 6600 of the Welfare and
15 Institutions Code, shall, after his or her release from
16 custody, verify his or her address no less than once every
17 90 days in a manner established by the Department of
18 Justice.

19 (E) No entity shall require a person to pay a fee to
20 register or update his or her registration pursuant to this
21 section. The registering agency shall submit registrations,
22 including annual updates or changes of address, directly
23 into the Department of Justice Violent Crime
24 Information Network (VCIN).

25 (2) The following persons shall be required to register
26 pursuant to paragraph (1):

27 (A) Any person who, since July 1, 1944, has been, or ~~is~~
28 hereafter *is*, convicted in any court in this state or in any
29 federal or military court of a violation of Section 207 or 209
30 committed with intent to violate Section 261, 286, 288,
31 288a, or 289, Section 220, except assault to commit
32 mayhem, Section 243.4, paragraph (1), (2), (3), (4), or
33 (6) of subdivision (a) of Section 261, or paragraph (1) of
34 subdivision (a) of Section 262 involving the use of force
35 or violence for which the person is sentenced to the state
36 prison, Section 264.1, 266, 266c, subdivision (b) of Section
37 266h, subdivision (b) of Section 266i, 266j, 267, 269, 285,
38 286, 288, 288a, 288.5, or 289, subdivision (b), (c), or (d) of
39 Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6,
40 former Section 647a, subdivision (c) of Section 653f,

1 subdivision 1 or 2 of Section 314, any offense involving
2 lewd or lascivious conduct under Section 272, or any
3 felony violation of Section 288.2; or any person who since
4 that date has been, or—~~is~~ hereafter *is*, convicted of the
5 attempt to commit any of the above-mentioned offenses.

6 (B) Any person who, since July 1, 1944, has been, or
7 hereafter *is*, released, discharged, or paroled from a penal
8 institution where he or she was confined because of the
9 commission or attempted commission of one of the
10 offenses described in subparagraph (A).

11 (C) Any person who, since July 1, 1944, has been, or
12 hereafter *is*, determined to be a mentally disordered sex
13 offender under Article 1 (commencing with Section
14 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare
15 and Institutions Code or any person who has been found
16 guilty in the guilt phase of a trial for an offense for which
17 registration is required by this section but who has been
18 found not guilty by reason of insanity in the sanity phase
19 of the trial.

20 (D) Any person who, since July 1, 1944, has been, or—~~is~~
21 hereafter *is*, convicted in any other court, including any
22 state, federal, or military court, of any offense which, if
23 committed or attempted in this state, would have been
24 punishable as one or more of the offenses described in
25 subparagraph (A) or any person ordered by any other
26 court, including any state, federal, or military court, to
27 register as a sex offender for any offense, if the court
28 found at the time of conviction or sentencing that the
29 person committed the offense as a result of sexual
30 compulsion or for purposes of sexual gratification.

31 (E) Any person ordered by any court to register
32 pursuant to this section for any offense not included
33 specifically in this section if the court finds at the time of
34 conviction or sentencing that the person committed the
35 offense as a result of sexual compulsion or for purposes of
36 sexual gratification. The court shall state on the record the
37 reasons for its findings and the reasons for requiring
38 registration.

39 (F) (i) Notwithstanding any other subdivision, a
40 person who was convicted before January 1, 1976, under

1 subdivision (a) of Section 286, or Section 288a, shall not be
2 required to register pursuant to this section for that
3 conviction if the conviction was for conduct between
4 consenting adults that was decriminalized by Chapter 71
5 of the Statutes of 1975 or Chapter 1139 of the Statutes of
6 1976. The Department of Justice shall remove that person
7 from the Sex Offender Registry, and the person is
8 discharged from his or her duty to register pursuant to the
9 following procedure:

10 (I) The person submits to the Department of Justice
11 official documentary evidence, including court records or
12 police reports, ~~which demonstrate~~ *that demonstrates* that
13 the person's conviction pursuant to either of those
14 sections was for conduct between consenting adults that
15 was decriminalized; or

16 (II) The person submits to the department a
17 declaration stating that the person's conviction pursuant
18 to either of those sections was for consensual conduct
19 between adults that has been decriminalized. The
20 declaration shall be confidential and not a public record,
21 and shall include the person's name, address, telephone
22 number, date of birth, and a summary of the
23 circumstances leading to the conviction, including the
24 date of the conviction and county of the occurrence.

25 (III) The department shall determine whether the
26 person's conviction was for conduct between consensual
27 adults that has been decriminalized. If the conviction was
28 for consensual conduct between adults that has been
29 decriminalized, and the person has no other offenses for
30 which he or she is required to register pursuant to this
31 section, the department shall, within 60 days of receipt of
32 those documents, notify the person that he or she is
33 relieved of the duty to register, and shall notify the local
34 law enforcement agency with which the person is
35 registered that he or she has been relieved of the duty to
36 register. The local law enforcement agency shall remove
37 the person's registration from its files within 30 days of
38 receipt of notification. If the documentary or other
39 evidence submitted is insufficient to establish the
40 person's claim, the department shall, within 60 days of



1 receipt of those documents, notify the person that his or
2 her claim cannot be established, and that the person shall
3 continue to register pursuant to this section. The
4 department shall provide, upon the person's request, any
5 information relied upon by the department in making its
6 determination that the person shall continue to register
7 pursuant to this section. Any person whose claim has been
8 denied by the department pursuant to this clause may
9 petition the court to appeal the department's denial of
10 the person's claim.

11 (ii) On or before July 1, 1998, the department shall
12 make a report to the Legislature concerning the status of
13 persons who may come under the provisions of this
14 subparagraph, including the number of persons who
15 were convicted before January 1, 1976, under subdivision
16 (a) of Section 286 or Section 288a and are required to
17 register under this section, the average age of these
18 persons, the number of these persons who have any
19 subsequent convictions for a registerable sex offense, and
20 the number of these persons who have sought successfully
21 or unsuccessfully to be relieved of their duty to register
22 under this section.

23 (b) (1) Any person who is released, discharged, or
24 paroled from a jail, state or federal prison, school, road
25 camp, or other institution where he or she was confined
26 because of the commission or attempted commission of
27 one of the offenses specified in subdivision (a) or is
28 released from a state hospital to which he or she was
29 committed as a mentally disordered sex offender under
30 Article 1 (commencing with Section 6300) of Chapter 2
31 of Part 2 of Division 6 of the Welfare and Institutions
32 Code, shall, prior to discharge, parole, or release, be
33 informed of his or her duty to register under this section
34 by the official in charge of the place of confinement or
35 hospital, and the official shall require the person to read
36 and sign any form that may be required by the
37 Department of Justice, stating that the duty of the person
38 to register under this section has been explained to the
39 person. The official in charge of the place of confinement
40 or hospital shall obtain the address where the person

1 expects to reside upon his or her discharge, parole, or
2 release and shall report the address to the Department of
3 Justice.

4 (2) The official in charge of the place of confinement
5 or hospital shall give one copy of the form to the person
6 and shall send one copy to the Department of Justice and
7 one copy to the appropriate law enforcement agency or
8 agencies having jurisdiction over the place the person
9 expects to reside upon discharge, parole, or release. If the
10 conviction that makes the person subject to this section
11 is a felony conviction, the official in charge shall, not later
12 than 45 days prior to the scheduled release of the person,
13 send one copy to the appropriate law enforcement
14 agency or agencies having local jurisdiction where the
15 person expects to reside upon discharge, parole, or
16 release; one copy to the prosecuting agency that
17 prosecuted the person; and one copy to the Department
18 of Justice. The official in charge of the place of
19 confinement shall retain one copy.

20 (c) Any person who is convicted in this state of the
21 commission or attempted commission of any of the
22 offenses specified in subdivision (a) and who is released
23 on probation, granted conditional release without
24 supervised probation, or discharged upon payment of a
25 fine shall, prior to release or discharge, be informed of the
26 duty to register under this section by the probation
27 department, and a probation officer shall require the
28 person to read and sign any form that may be required by
29 the Department of Justice, stating that the duty of the
30 person to register under this section has been explained
31 to him or her. The probation officer shall obtain the
32 address where the person expects to reside upon release
33 or discharge and shall report within three days the
34 address to the Department of Justice. The probation
35 officer shall give one copy of the form to the person, send
36 one copy to the Department of Justice, and forward one
37 copy to the appropriate law enforcement agency or
38 agencies having local jurisdiction where the person
39 expects to reside upon his or her discharge, parole, or
40 release.

1 (d) (1) Any person who, on or after January 1, 1986,
2 is discharged or paroled from the Department of the
3 Youth Authority to the custody of which he or she was
4 committed after having been adjudicated a ward of the
5 juvenile court pursuant to Section 602 of the Welfare and
6 Institutions Code because of the commission or
7 attempted commission of any offense described in
8 paragraph (3) shall be subject to registration under the
9 procedures of this section.

10 (2) Any person who is discharged or paroled from a
11 facility in another state that is equivalent to the
12 Department of the Youth Authority, to the custody of
13 which he or she was committed because of an offense
14 which, if committed or attempted in this state, would
15 have been punishable as one or more of the offenses
16 described in paragraph (3), shall be subject to
17 registration under the procedures of this section.

18 (3) Any person described in this subdivision who
19 committed an offense in violation of any of the following
20 provisions shall be required to register pursuant to this
21 section:

22 (A) Assault with intent to commit rape, sodomy, oral
23 copulation, or any violation of Section 264.1, 288, or 289
24 under Section 220.

25 (B) Any offense defined in paragraph (1), (2), (3),
26 (4), or (6) of subdivision (a) of Section 261, Section 264.1,
27 266c, or 267, paragraph (1) of subdivision (b) of, or
28 subdivision (c) or (d) of, Section 286, Section 288 or 288.5,
29 paragraph (1) of subdivision (b) of, or subdivision (c) or
30 (d) of, Section 288a, subdivision (a) of Section 289, or
31 Section 647.6.

32 (C) A violation of Section 207 or 209 committed with
33 the intent to violate Section 261, 286, 288, 288a, or 289.

34 (4) Prior to discharge or parole from the Department
35 of the Youth Authority, any person who is subject to
36 registration under this subdivision shall be informed of
37 the duty to register under the procedures set forth in this
38 section. Department of the Youth Authority officials shall
39 transmit the required forms and information to the
40 Department of Justice.

1 (5) All records specifically relating to the registration
2 in the custody of the Department of Justice, law
3 enforcement agencies, and other agencies or public
4 officials shall be destroyed when the person who is
5 required to register has his or her records sealed under
6 the procedures set forth in Section 781 of the Welfare and
7 Institutions Code. This subdivision shall not be construed
8 as requiring the destruction of other criminal offender or
9 juvenile records relating to the case that are maintained
10 by the Department of Justice, law enforcement agencies,
11 the juvenile court, or other agencies and public officials
12 unless ordered by a court under Section 781 of the
13 Welfare and Institutions Code.

14 (e) (1) On or after January 1, 1998, upon
15 incarceration, placement, or commitment, or prior to
16 release on probation, any person who is required to
17 register under this section shall preregister. The
18 preregistering official shall be the admitting officer at the
19 place of incarceration, placement, or commitment, or the
20 probation officer if the person is to be released on
21 probation. The preregistration shall consist of all of the
22 following:

23 (A) A preregistration statement in writing, signed by
24 the person, giving information that may be required by
25 the Department of Justice.

26 (B) The fingerprints and photograph of the person.

27 ~~(C)~~

28 (2) Any person who is preregistered pursuant to this
29 subdivision is required to be preregistered only once.

30 ~~(2)~~

31 (3) A person described in paragraph (2) of subdivision
32 (a) shall register, or reregister if the person has previously
33 registered, upon release from incarceration, placement,
34 or commitment, pursuant to paragraph (1) of subdivision
35 (a). The registration shall consist of all of the following:

36 (A) A statement in writing signed by the person,
37 giving information as may be required by the
38 Department of Justice.

39 (B) The fingerprints and photograph of the person.

1 (C) The license plate number of any vehicle owned
2 by, regularly driven by, or registered in the name of, the
3 person.

4 (D) Notice to the person that, in addition to the
5 requirements of ~~paragraph (4)~~ *subdivision (f)*, he or she
6 may have a duty to register in any other state where he
7 or she may relocate.

8 (E) Copies of adequate proof of residence, which shall
9 be limited to a California driver's license, California
10 identification card, recent rent or utility receipt, printed
11 personalized checks or other recent banking documents
12 showing that person's name and address, or any other
13 information that the registering official believes is
14 reliable. If the person has no residence and no reasonable
15 expectation of obtaining a residence in the foreseeable
16 future, the person shall so advise the registering official
17 and shall sign a statement provided by the registering
18 official stating that fact. Upon presentation of proof of
19 residence to the registering official or a signed statement
20 that the person has no residence, the person shall be
21 allowed to register. If the person claims that he or she has
22 a residence but does not have any proof of residence, he
23 or she shall be allowed to register but shall furnish proof
24 of residence within 30 days of the day he or she is allowed
25 to register. If a registrant fails to furnish proof of residence
26 within this 30-day period, he or she shall be guilty of a
27 misdemeanor.

28 ~~(3)~~

29 (4) Within three days thereafter, the preregistering
30 official or the registering law enforcement agency or
31 agencies shall forward the statement, fingerprints,
32 photograph, and vehicle license plate number, if any, to
33 the Department of Justice.

34 (f) (1) If any person who is required to register
35 pursuant to this section changes his or her residence
36 address or location, whether within the jurisdiction in
37 which he or she is currently registered or to a new
38 jurisdiction inside or outside the state, the person shall
39 inform, in writing within five working days, the law
40 enforcement agency or agencies with which he or she last

1 registered of the new address or location. The law
2 enforcement agency or agencies shall, within three days
3 after receipt of this information, forward a copy of the
4 change of address or location information to the
5 Department of Justice. The Department of Justice shall
6 forward appropriate registration data to the law
7 enforcement agency or agencies having local jurisdiction
8 of the new place of residence or location.

9 (2) If the person's new address is in a Department of
10 the Youth Authority facility or a state prison or state
11 mental institution, an official of the place of incarceration,
12 placement, or commitment shall, within 90 days of
13 receipt of the person, forward the registrant's change of
14 address information to the Department of Justice. The
15 agency need not provide a physical address for the
16 registrant but shall indicate that he or she is serving a
17 period of incarceration or commitment in a facility under
18 the agency's jurisdiction. This paragraph shall apply to
19 persons received in a Department of the Youth Authority
20 facility or a state prison or state mental institution on or
21 after January 1, 1999. The Department of Justice shall
22 forward the change of address information to the agency
23 with which the person last registered.

24 (3) If any person who is required to register pursuant
25 to this section changes his or her name, the person shall
26 inform, in person, the law enforcement agency or
27 agencies with which he or she is currently registered
28 within five working days. The law enforcement agency or
29 agencies shall forward a copy of this information to the
30 Department of Justice within three days of its receipt.

31 (g) (1) Any person who is required to register under
32 this section based on a misdemeanor conviction who
33 willfully violates any requirement of this section is guilty
34 of a misdemeanor punishable by imprisonment in a
35 county jail not exceeding one year.

36 (2) Except as provided in paragraph (5), any person
37 who is required to register under this section based on a
38 felony conviction who willfully violates any requirement
39 of this section or who has a prior conviction for the offense
40 of failing to register under this section and who

1 subsequently and willfully violates any requirement of
2 this section is guilty of a felony and shall be punished by
3 imprisonment in the state prison for 16 months, or two or
4 three years.

5 If probation is granted or if the imposition or execution
6 of sentence is suspended, it shall be a condition of the
7 probation or suspension that the person serve at least 90
8 days in a county jail. The penalty described in this
9 paragraph shall apply whether or not the person has been
10 released on parole or has been discharged from parole.

11 (3) Any person determined to be a mentally
12 disordered sex offender or who has been found guilty in
13 the guilt phase of trial for an offense for which registration
14 is required under this section, but who has been found not
15 guilty by reason of insanity in the sanity phase of the trial,
16 who willfully violates any requirement of this section is
17 guilty of a misdemeanor and shall be punished by
18 imprisonment in a county jail not exceeding one year. For
19 any second or subsequent willful violation of any
20 requirement of this section, the person is guilty of a felony
21 and shall be punished by imprisonment in the state prison
22 for 16 months, or two or three years.

23 (4) If, after discharge from parole, the person is
24 convicted of a felony as specified in this subdivision, he or
25 she shall be required to complete parole of at least one
26 year, in addition to any other punishment imposed under
27 this subdivision. A person convicted of a felony as
28 specified in this subdivision may be granted probation
29 only in the unusual case where the interests of justice
30 would best be served. When probation is granted under
31 this paragraph, the court shall specify on the record and
32 shall enter into the minutes the circumstances indicating
33 that the interests of justice would best be served by the
34 disposition.

35 (5) Any person who, as a sexually violent predator, as
36 defined in Section 6600 of the Welfare and Institutions
37 Code, fails to verify his or her registration every 90 days
38 as required pursuant to subparagraph (D) of paragraph
39 (1) of subdivision (a), shall be punished by imprisonment

1 in the state prison, or in a county jail, not exceeding one
2 year.

3 (6) Except as otherwise provided in paragraph (5),
4 and in addition to any other penalty imposed under this
5 subdivision, any person who is required pursuant to
6 subparagraph (B) of paragraph (1) of subdivision (a) to
7 update his or her registration every 90 days and willfully
8 fails to update his or her registration is guilty of a
9 misdemeanor and shall be punished by imprisonment in
10 a county jail not exceeding six months. Any subsequent
11 violation of this requirement that persons described in
12 subparagraph (B) of paragraph (1) of subdivision (a)
13 shall update their registration every 90 days is also a
14 misdemeanor and shall be punished by imprisonment in
15 a county jail not exceeding six months.

16 (7) Any person who is required to register under this
17 section who willfully violates any requirement of this
18 section is guilty of a continuing offense.

19 (h) Whenever any person is released on parole or
20 probation and is required to register under this section
21 but fails to do so within the time prescribed, the parole
22 authority, the Youthful Offender Parole Board, or the
23 court, as the case may be, shall order the parole or
24 probation of the person revoked. For purposes of this
25 subdivision, “parole authority” has the same meaning as
26 described in Section 3000.

27 (i) Except as provided in subdivisions (m) and (n) and
28 Section 290.4, the statements, photographs, and
29 fingerprints required by this section shall not be open to
30 inspection by the public or by any person other than a
31 regularly employed peace officer or other law
32 enforcement officer.

33 (j) In any case in which a person who would be
34 required to register pursuant to this section for a felony
35 conviction is to be temporarily sent outside the institution
36 where he or she is confined on any assignment within a
37 city or county including firefighting, disaster control, or
38 of whatever nature the assignment may be, the local law
39 enforcement agency having jurisdiction over the place or
40 places where the assignment shall occur shall be notified

1 within a reasonable time prior to removal from the
2 institution. This subdivision shall not apply to any person
3 who is temporarily released under guard from the
4 institution where he or she is confined.

5 (k) As used in this section, “mentally disordered sex
6 offender” includes any person who has been determined
7 to be a sexual psychopath or a mentally disordered sex
8 offender under any provision which, on or before January
9 1, 1976, was contained in Division 6 (commencing with
10 Section 6000) of the Welfare and Institutions Code.

11 (l) (1) Every person who, prior to January 1, 1997, is
12 required to register under this section, shall be notified
13 whenever he or she next reregisters of the reduction of
14 the registration period from 14 to 5 working days. This
15 notice shall be provided in writing by the registering
16 agency or agencies. Failure to receive this notification
17 shall be a defense against the penalties prescribed by
18 subdivision (g) if the person did register within 14 days.

19 (2) Every person who, as a sexually violent predator,
20 as defined in Section 6600 of the Welfare and Institutions
21 Code, is required to verify his or her registration every 90
22 days, shall be notified wherever he or she next registers
23 of his or her increased registration obligations. This notice
24 shall be provided in writing by the registering agency or
25 agencies. Failure to receive this notice shall be a defense
26 against the penalties prescribed by paragraph (5) of
27 subdivision (g).

28 (m) (1) When a peace officer reasonably suspects,
29 based on information that has come to his or her attention
30 through information provided by any peace officer or
31 member of the public, that a child or other person may
32 be at risk from a sex offender convicted of a crime listed
33 in paragraph (1) of subdivision (a) of Section 290.4, a law
34 enforcement agency may, notwithstanding any other
35 provision of law, provide any of the information specified
36 in paragraph (4) of this subdivision about that registered
37 sex offender that the agency deems relevant and
38 necessary to protect the public, to the following persons,
39 agencies, or organizations the offender is likely to
40 encounter, including, but not limited to, the following:

1 (A) Public and private educational institutions, day
2 care establishments, and establishments and
3 organizations that primarily serve individuals likely to be
4 victimized by the offender.

5 (B) Other community members at risk.

6 (2) The law enforcement agency may authorize
7 persons and entities who receive the information
8 pursuant to paragraph (1) to disclose information to
9 additional persons only if the agency does the following:

10 (A) Determines that all conditions set forth in
11 paragraph (1) have been satisfied regarding disclosure to
12 the additional persons.

13 (B) Identifies the appropriate scope of further
14 disclosure.

15 (3) Persons notified pursuant to paragraph (1) may
16 disclose the information provided by the law
17 enforcement agency in the manner and to the extent
18 authorized by the law enforcement agency.

19 (4) The information that may be disclosed pursuant to
20 this section includes the following:

21 (A) The offender's full name.

22 (B) The offender's known aliases.

23 (C) The offender's gender.

24 (D) The offender's race.

25 (E) The offender's physical description.

26 (F) The offender's photograph.

27 (G) The offender's date of birth.

28 (H) Crimes resulting in registration under this section.

29 (I) The offender's address, which must be verified
30 prior to publication.

31 (J) Description and license plate number of offender's
32 vehicles or vehicles the offender is known to drive.

33 (K) Type of victim targeted by the offender.

34 (L) Relevant parole or probation conditions, such as
35 one prohibiting contact with children.

36 (M) Dates of crimes resulting in classification under
37 this section.

38 (N) Date of release from confinement.

1 However, information disclosed pursuant to this
2 subdivision shall not include information that would
3 identify the victim.

4 (5) If a law enforcement agency discloses information
5 pursuant to this subdivision, it shall include, with the
6 disclosure, a statement that the purpose of the release of
7 the information is to allow members of the public to
8 protect themselves and their children from sex offenders.

9 (6) For purposes of this section, “likely to encounter”
10 means both of the following:

11 (A) That the agencies, organizations, or other
12 community members are in a location or in close
13 proximity to a location where the offender lives or is
14 employed, or that the offender visits or is likely to visit on
15 a regular basis.

16 (B) The types of interaction that ordinarily occur at
17 that location and other circumstances indicate that
18 contact with the offender is reasonably probable.

19 (7) For purposes of this section, “reasonably suspects”
20 means that it is objectively reasonable for a peace officer
21 to entertain a suspicion, based upon facts that could cause
22 a reasonable person in a like position, drawing when
23 appropriate on his or her training and experience, to
24 suspect that a child or other person is at risk.

25 (8) For purposes of this section, “at risk” means *that* a
26 person is, or may be exposed to, a risk of becoming a
27 victim of a sex offense committed by the offender.

28 (9) A law enforcement agency may continue to
29 disclose information ~~on~~ *about* an offender under this
30 subdivision for as long as the offender is included in
31 Section 290.4.

32 (n) In addition to the procedures set forth elsewhere
33 in this section, a designated law enforcement entity may
34 advise the public of the presence of high-risk sex
35 offenders in its community pursuant to this subdivision.

36 (1) For purposes of this subdivision:

37 (A) A high-risk sex offender is a person who has been
38 convicted of an offense specified in paragraph (1) of
39 subdivision (a) of Section 290.4 and ~~also~~ meets ~~one~~ *any* of
40 the following criteria:

1 (i) Has been convicted of three or more violent sex
2 offenses, at least two of which were brought and tried
3 separately.

4 (ii) Has been convicted of two violent sex offenses and
5 one or more violent nonsex offenses, at least two of which
6 were brought and tried separately.

7 (iii) Has been convicted of one violent sex offense and
8 two or more violent nonsex offenses, at least two of which
9 were brought and tried separately.

10 (iv) Has been convicted of either two violent sex
11 offenses or one violent sex offense and one violent nonsex
12 offense, at least two of which were brought and tried
13 separately, and has been arrested on separate occasions
14 for three or more violent sex offenses, violent nonsex
15 offenses, or associated offenses.

16 (v) Has been adjudicated a sexually violent predator
17 pursuant to Article 4 (commencing with Section 6600) of
18 Chapter 2 of Part 2 of Division 6 of the Welfare and
19 Institutions Code.

20 (B) A violent sex offense means any offense defined in
21 Section 220, except attempt to commit mayhem, 261,
22 264.1, 286, 288, 288a, 288.5, 289, or 647.6, or infliction of
23 great bodily injury during the commission of a sex offense,
24 as provided in Section 12022.8.

25 (C) A violent nonsex offense means any offense
26 defined in Section 187, subdivision (a) of Section 192, or
27 Section 203, 206, 207, or 236, provided that the offense is
28 a felony, subdivision (a) of Section 273a, Section 273d or
29 451, or attempted murder, as defined in Sections 187 and
30 664.

31 (D) An associated offense means any offense defined
32 in Section 243.4, provided that the offense is a felony,
33 Section 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.7, or 314,
34 Section 459, provided the offense is of the first degree,
35 Section 597 or 646.9, subdivision (d), (h), or (i) of Section
36 647, Section 653m, or infliction of great bodily injury
37 during the commission of a felony, as defined in Section
38 12022.7.

39 (E) For purposes of subparagraphs (B) to (D),
40 inclusive, an arrest or conviction for the statutory

predecessor of any of the enumerated offenses, or an arrest or conviction in any other jurisdiction for any offense ~~which~~ *that*, if committed or attempted in this state, would have been punishable as one or more of the offenses described in those subparagraphs, is to be considered in determining whether an offender is a high-risk sex offender.

(F) For purposes of subparagraphs (B) to (D), inclusive, an arrest as a juvenile or an adjudication as a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code for any of the offenses described in those subparagraphs is to be considered in determining whether an offender is a high-risk sex offender.

(G) Notwithstanding subparagraphs (A) to (D), inclusive, an offender shall not be considered to be a high-risk sex offender if either of the following apply:

(i) The offender's most recent conviction or arrest for an offense described in subparagraphs (B) to (D), inclusive, occurred more than five years prior to the high-risk assessment by the Department of Justice, excluding periods of confinement.

(ii) The offender notifies the Department of Justice, on a form approved by the department and available at any sheriff's office, that he or she has not been convicted in the preceding 15 years, excluding periods of confinement, of an offense for which registration is required under paragraph (2) of subdivision (a), and the department is able, upon exercise of reasonable diligence, to verify the information provided in paragraph (2).

(H) "Confinement" means confinement in a jail, prison, school, road camp, or other penal institution, confinement in a state hospital to which the offender was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, or confinement in a facility designated by the Director of Mental Health to which the offender was committed as a sexually violent predator under Article 4

1 (commencing with Section 6600) of Chapter 2 of Part 2
2 of Division 6 of the Welfare and Institutions Code.

3 (I) “Designated law enforcement entity” means any
4 of the following: *a* municipal police department;, sheriff’s
5 department;, district attorney’s office;, county probation
6 department;, Department of Justice;, Department of
7 Corrections;, Department of the Youth Authority;,
8 Department of the California Highway Patrol;, or the
9 police department of any campus of the University of
10 California—~~or~~; the California State University, or *any*
11 community college.

12 (2) The Department of Justice shall continually search
13 the records provided to it pursuant to subdivision (b) and
14 identify, on the basis of those records, high-risk sex
15 offenders. Four times each year, the department shall
16 provide to each chief of police and sheriff in the state, and
17 to any other designated law enforcement entity upon
18 request, the following information regarding each
19 identified high-risk sexual offender: full name;, known
20 aliases;, gender;, race;, physical description;, photograph;,
21 date of birth;, and crimes resulting in classification under
22 this section.

23 (3) The Department of Justice and any designated law
24 enforcement entity to which notice has been given
25 pursuant to paragraph (2) may cause to be made public,
26 by whatever means the agency deems necessary to
27 ensure the public safety, based upon information
28 available to the agency concerning a specific person,
29 including, but not limited to, the information described
30 in paragraph (2); the offender’s address, which shall be
31 verified prior to publication; description and license plate
32 number of the offender’s vehicles or vehicles the offender
33 is known to drive; type of victim targeted by the offender;
34 relevant parole or probation conditions, such as one
35 prohibiting contact with children; dates of crimes
36 resulting in classification under this section; and date of
37 release from confinement; but excluding information
38 that would identify the victim.

39 (4) Notwithstanding any other provision of law, any
40 person described in paragraph (2) of subdivision (p) who



1 receives information from a designated law enforcement
2 entity pursuant to paragraph (3) of subdivision (n) may
3 disclose that information in the manner and to the extent
4 authorized by the law enforcement entity.

5 (o) Agencies disseminating information to the public
6 pursuant to Section 290.4 shall maintain records of those
7 persons requesting to view the CD-ROM or other
8 electronic media for a minimum of five years. Agencies
9 disseminating information to the public pursuant to
10 subdivision (n) shall maintain records of the means and
11 dates of dissemination for a minimum of five years.

12 (p) (1) Any law enforcement agency and employees
13 of any law enforcement agency shall be immune from
14 liability for good faith conduct under this section. For the
15 purposes of this section, "law enforcement agency"
16 means the Attorney General of California, every district
17 attorney, and every state or local agency expressly
18 authorized by statute to investigate or prosecute law
19 violators.

20 (2) Any public or private educational institution, day
21 care facility, or any child care custodian described in
22 Section 11165.7, or any employee of a public or private
23 educational institution or day care facility which in good
24 faith disseminates information as authorized pursuant to
25 paragraph (3) of subdivision (m) or paragraph (4) of
26 subdivision (n) that is provided by a law enforcement
27 agency or an employee of a law enforcement agency shall
28 be immune from civil liability.

29 (q) Any person who uses information disclosed
30 pursuant to this section to commit a felony shall be
31 punished, in addition and consecutive to any other
32 punishment, by a five-year term of imprisonment in the
33 state prison. Any person who uses information disclosed
34 pursuant to this section to commit a misdemeanor shall be
35 subject to, in addition to any other penalty or fine
36 imposed, a fine of not less than five hundred dollars
37 (\$500) and not more than one thousand dollars (\$1,000).

38 (r) The registration and public notification provisions
39 of this section are applicable to every person described in
40 this section, without regard to when his or her crimes

1 were committed or his or her duty to register pursuant to
2 this section arose, and to every offense described in this
3 section, regardless of when it was committed.

4 SEC. 139. Section 298 of the Penal Code is amended
5 to read:

6 298. (a) The Director of Corrections, or the Chief
7 Administrative Officer of the detention facility, jail, or
8 other facility at which the blood specimens, saliva
9 samples, and thumb and palm print impressions were
10 collected shall cause these specimens, samples, and print
11 impressions to be forwarded promptly to the
12 Department of Justice. The specimens, samples, and print
13 impressions shall be collected by a person using a
14 Department of Justice approved collection kit and in
15 accordance with the requirements and procedures set
16 forth in subdivision (b).

17 (b) (1) The Department of Justice shall provide all
18 blood specimen vials, mailing tubes, labels, and
19 instructions for the collection of the blood specimens,
20 saliva samples, and thumbprints. The specimens, samples,
21 and thumbprints shall thereafter be forwarded to the
22 DNA Laboratory of the Department of Justice for analysis
23 of DNA and other forensic identification markers.

24 Additionally, the Department of Justice shall provide
25 all full palm print cards, mailing envelopes, and
26 instructions for the collection of full palm prints. The full
27 palm prints, on a form prescribed by the Department of
28 Justice, shall thereafter be forwarded to the Department
29 of Justice for maintenance in a file for identification
30 purposes.

31 (2) The withdrawal of blood shall be performed in a
32 medically approved manner. Only health care providers
33 trained and certified to draw blood may withdraw the
34 blood specimens for purposes of this section.

35 (3) Right thumbprints and a full palm print impression
36 of each hand shall be taken on forms prescribed by the
37 Department of Justice. The palm print forms shall be
38 forwarded to and maintained by the Bureau of Criminal
39 Identification and Information of the Department of
40 Justice. Right thumbprints also shall be taken at the time

1 of the withdrawal of blood and shall be placed on the
2 forms and the blood vial label. The blood vial and
3 thumbprint forms shall be forwarded to and maintained
4 by the DNA Laboratory of the Department of Justice.

5 (4) The DNA—~~laboratory~~ Laboratory of the
6 Department of Justice is responsible for establishing
7 procedures for entering data bank and data base
8 information.

9 (c) (1) Persons authorized to draw blood under this
10 chapter for the data bank or data base shall not be civilly
11 or criminally liable either for withdrawing blood when
12 done in accordance with medically accepted procedures,
13 or for obtaining saliva samples or thumb or palm print
14 impressions when performed in accordance with
15 standard professional practices.

16 (2) There is no civil or criminal cause of action against
17 any law enforcement agency or the Department of
18 Justice, or any employee thereof, for a mistake in placing
19 an entry in a data bank or a data base.

20 SEC. 140. Section 299 of the Penal Code is amended
21 to read:

22 299. (a) A person whose DNA profile has been
23 included in the data bank pursuant to this chapter shall
24 have his or her information and materials expunged from
25 the data bank when the underlying conviction or
26 disposition serving as the basis for including the DNA
27 profile has been reversed and the case dismissed, the
28 defendant has been found factually innocent of the
29 underlying offense pursuant to Section 851.8, the
30 defendant has been found not guilty, or the defendant has
31 been acquitted of the underlying offense. The court
32 issuing the reversal, dismissal, or acquittal shall order the
33 expungement and shall send a copy of that order to the
34 Department of Justice DNA Laboratory Director. Upon
35 receipt of the court order, the Department of Justice shall
36 expunge all identifiable information in the data bank and
37 any criminal identification records pertaining to the
38 person.

39 (b) (1) A person whose DNA profile has been
40 included in a data bank pursuant to this chapter may

1 make a written request to expunge information and
2 materials from the data bank. The person requesting the
3 data bank entry to be expunged must send a copy of his
4 or her request to the trial court that entered the
5 conviction or rendered disposition in the case, to the
6 DNA Laboratory of the Department of Justice, and to the
7 prosecuting attorney of the county in which he or she was
8 convicted, with proof of service on all parties. The court
9 has the discretion to grant or deny the request for
10 expungement. The denial of a request for expungement
11 is a nonappealable order and shall not be reviewed by
12 petition for writ.

13 (2) Except as provided below, the Department of
14 Justice shall expunge all identifiable information in the
15 data bank and any criminal identification records
16 pertaining to the person upon receipt of a court order
17 that verifies the applicant has made the necessary
18 showing at a noticed hearing, and that includes all of the
19 following:

20 (A) The written request for expungement pursuant to
21 this section.

22 (B) A certified copy of the court order reversing and
23 dismissing the conviction, or a letter from the district
24 attorney certifying that the defendant has been found
25 factually innocent, the defendant has been found not
26 guilty, the defendant has been acquitted of the
27 underlying offense, or the underlying conviction has
28 been reversed and the case dismissed.

29 (C) Proof of written notice to the prosecuting attorney
30 and the Department of Justice that expungement has
31 been requested.

32 (D) A court order verifying that no retrial or appeal of
33 the case is pending, that it has been at least 180 days since
34 the defendant notified the prosecuting attorney and the
35 Department of Justice of the expungement request, and
36 that the court has not received an objection from the
37 Department of Justice or the prosecuting attorney.

38 (c) Upon order of the court, the Department of Justice
39 shall destroy any specimen or sample collected from the
40 person and any criminal identification records pertaining

1 to the person, unless the department determines that the
2 person has otherwise become obligated to submit a blood
3 specimen as a result of a separate conviction, juvenile
4 adjudication, or finding of guilty or not guilty by reason
5 of insanity for an offense described in subdivision (a) of
6 Section 296, or as a condition of a plea.

7 The Department of Justice is not required to destroy an
8 autoradiograph or other item obtained from a blood
9 specimen if evidence relating to another person subject
10 to the provisions of this chapter would thereby be
11 destroyed.

12 Any identification, warrant, probable cause to arrest, or
13 arrest based upon a data bank match is not invalidated
14 due to a failure to expunge or a delay in expunging
15 records.

16 (d) The DNA—~~laboratory~~ Laboratory of the
17 Department of Justice shall review its data bank to
18 determine whether it contains DNA profiles from
19 persons who are no longer suspects in a criminal case.
20 Evidence accumulated pursuant to this chapter from any
21 crime scene with respect to a particular person shall be
22 stricken from the data bank when it is determined that
23 the person is no longer a suspect in the case.

24 SEC. 141. Section 299.6 of the Penal Code is amended
25 to read:

26 299.6. (a) ~~Nothing in this~~ *This chapter—shall does not*
27 prohibit the sharing or disseminating of population data
28 base or data bank information with any of the following:

29 (1) Federal, state, or local law enforcement agencies.

30 (2) Crime laboratories, whether public or private, that
31 serve federal, state, and local law enforcement agencies
32 that have been approved by the Department of Justice.

33 (3) The attorney general's office of any state.

34 (4) Any third party that the Department of Justice
35 deems necessary to assist the department's crime
36 laboratory with statistical analyses of the population data
37 base or to assist in the recovery or identification of human
38 remains for humanitarian purposes, including
39 identification of missing persons.

~~Nothing in this~~ This chapter ~~shall~~ *does not* prohibit the sharing or disseminating of protocol and forensic DNA analysis methods and quality control procedures with any of the following:

(1) Federal, state, or local law enforcement agencies.

(2) Crime laboratories, whether public or private, that serve federal, state, and local law enforcement agencies that have been approved by the Department of Justice.

(3) The attorney general's office of any state.

(4) Any third party that the Department of Justice deems necessary to assist the department's crime laboratory with analyses of forensic protocol, research methods, or quality control procedures.

(c) The population data base and data bank of the ~~DNA-laboratory~~ Laboratory of the Department of Justice may be made available to and searched by the FBI and any other agency participating in the FBI's CODIS System.

(d) The Department of Justice may provide portions of the blood specimens and saliva samples collected pursuant to this chapter to local public DNA laboratories for identification purposes, provided that the privacy provisions of this section are followed by the local laboratory and ~~if each~~ *that all* of the following conditions ~~is are~~ met:

(1) The procedures used by the local public DNA laboratory for the handling of specimens and samples and the disclosure of results are the same as those established by the Department of Justice pursuant to Sections 297, 298, and 299.5.

(2) The methodologies and procedures used by the local public DNA laboratory for DNA or forensic identification analysis are compatible with those established by the Department of Justice pursuant to subdivision (i) of Section 299.5, or otherwise are determined by the Department of Justice to be valid and appropriate for identification purposes.

(3) Only tests of value to law enforcement for identification purposes are performed, and a copy of the

1 results of the analysis ~~are~~ *is* sent to the Department of
2 Justice.

3 (4) All provisions of this section concerning privacy
4 and security are followed.

5 (5) The local public DNA laboratory assumes all costs
6 of securing the specimens and samples and provides
7 appropriate tubes, labels, and instructions necessary to
8 secure the samples.

9 (e) Any local public DNA laboratory that collects
10 DNA typing information shall comply with and be subject
11 to all of the rules, regulations, and restrictions of this
12 chapter and shall follow the policies of the DNA
13 Laboratory of the Department of Justice.

14 SEC. 142. Section 350 of the Penal Code is amended
15 to read:

16 350. (a) Any person who; willfully manufactures,
17 intentionally sells, or knowingly possesses for sale any
18 counterfeit of a mark registered with the Secretary of
19 State or registered on the Principal Register of the United
20 States Patent and Trademark Office, shall, upon
21 conviction, be punishable as follows:

22 (1) ~~Where~~ *When* the offense involves less than 1,000 of
23 the articles described in this subdivision, with a total retail
24 or fair market value less than that required for grand theft
25 as defined in Section 487, and if the person is an
26 individual, he or she shall be punished by a fine of not
27 more than five thousand dollars (\$5,000), *or* by
28 imprisonment in a county jail for not more than one year,
29 or by both that fine and imprisonment; or, if the person
30 is a corporation, by a fine of not more than one hundred
31 thousand dollars (\$100,000).

32 (2) ~~Where~~ *When* the offense involves 1,000 or more of
33 the articles described in this subdivision, or has a total
34 retail or fair market value equal to or greater than that
35 required for grand theft as defined in Section 487, and if
36 the person is an individual, he or she shall be punished by
37 imprisonment in a county jail not to exceed one year, or
38 in the state prison for 16 months, or two or three years, *or*
39 by a fine not to exceed two hundred fifty thousand dollars
40 (\$250,000), or by both that imprisonment and fine; or, if

1 the person is a corporation, by a fine not to exceed five
2 hundred thousand dollars (\$500,000).

3 (b) Any person who has been convicted of a violation
4 of either paragraph (1) or (2) of subdivision (a) shall,
5 upon a subsequent conviction of paragraph (1) of
6 subdivision (a), if the person is an individual, be punished
7 by a fine of not more than fifty thousand dollars (\$50,000),
8 or by imprisonment in a county jail for not more than one
9 year, or in the state prison for 16 months, or two or three
10 years, or by both that fine and imprisonment; or, if the
11 person is a corporation, by a fine of not more than two
12 hundred thousand dollars (\$200,000).

13 (c) Any person who has been convicted of a violation
14 of subdivision (a) and who, by virtue of the conduct that
15 was the basis of the conviction, has directly and
16 foreseeably caused death or great bodily injury to another
17 through reliance on the counterfeited item for its
18 intended purpose shall, if the person is an individual, be
19 punished by a fine of not more than fifty thousand dollars
20 (\$50,000), or by imprisonment in the state prison for two,
21 three, or four years, or by both that fine and
22 imprisonment; or, if ~~that~~ the person is a corporation, by
23 a fine of not more than two hundred thousand dollars
24 (\$200,000).

25 (d) In any action brought under this section resulting
26 in a conviction or a plea of nolo contendere, the court
27 shall order the forfeiture and destruction of all of those
28 marks and of all goods, articles, or other matter bearing
29 the marks, and the forfeiture and destruction or other
30 disposition of all means of making the marks, and any and
31 all electrical, mechanical, or other devices for
32 manufacturing, reproducing, transporting, or assembling
33 these marks, that were used in connection with, or were
34 part of, any violation of this section. However, no vehicle
35 shall be forfeited under this section that may be lawfully
36 driven on the highway with a class 3 or 4 license, as
37 prescribed in Section 12804 of the Vehicle Code, and that
38 is any of the following:

39 (1) A community property asset of a person other than
40 the defendant.



(2) The sole class 3 or 4 vehicle available to the immediate family of that person or of the defendant.

(3) Reasonably necessary to be retained by the defendant for the purpose of lawfully earning a living, or for any other reasonable and lawful purpose.

(e) ~~As used in~~ *For the purposes of* this section, the following definitions shall apply:

(1) When counterfeited but unassembled components of computer software packages are recovered, including, but not limited to, counterfeited computer diskettes, instruction manuals, or licensing envelopes, the number of “articles” shall be equivalent to the number of completed computer software packages that could have been made from those components.

(2) “Counterfeit mark” means a spurious mark that is identical with, or confusingly similar to, a registered mark and is used on or in connection with the same type of goods or services for which the genuine mark is registered. It is not necessary for the mark to be displayed on the outside of an article for there to be a violation. For articles containing digitally stored information, it shall be sufficient to constitute a violation if the counterfeit mark appears on a video display when the information is retrieved from the article. The term “spurious mark” includes genuine marks used on or in connection with spurious articles and includes identical articles containing identical marks, where the goods or marks were reproduced without authorization of, or in excess of any authorization granted by, the registrant.

(3) “Knowingly possess” means that the person possessing an article knew or had reason to believe that it was spurious, or that it was used on or in connection with spurious articles, or that it was reproduced without authorization of, or in excess of any authorization granted by, the registrant.

(4) “Registrant” means any person to whom the registration of a mark is issued and that person’s legal representatives, successors, or assigns.

(5) “Sale” includes resale.

(6) “Value” has the following meanings:

1 (A) When counterfeit items of computer software are
2 manufactured or possessed for sale, the “value” of those
3 items shall be equivalent to the retail price or fair market
4 price of the true items that are counterfeited.

5 (B) When counterfeited but unassembled
6 components of computer software packages are
7 recovered, including, but not limited to, counterfeited
8 digital disks, instruction manuals, or licensing envelopes,
9 the “value” of those components of computer software
10 packages shall be equivalent to the retail price or fair
11 market value of the number of completed computer
12 software packages that could have been made from those
13 components.

14 (C) “Retail or fair market value” of a counterfeit
15 article means a value equivalent to the retail price or fair
16 market value, as of the last day of the charged crime, of
17 a completed similar genuine article containing a genuine
18 mark.

19 (f) This section shall not be enforced against any party
20 who has adopted and lawfully used the same or
21 confusingly similar mark in the rendition of like services
22 or the manufacture or sale of like goods in this state from
23 a date prior to the earliest effective date of registration of
24 the service mark or trademark either with the Secretary
25 of State or on the Principle Register of the United States
26 Patent and Trademark Office.

27 (g) An owner, officer, employee, or agent who
28 provides, rents, leases, licenses, or sells real property upon
29 which a violation of subdivision (a) occurs shall not be
30 subject to a criminal penalty pursuant to this section,
31 unless he or she sells, or possesses for sale, articles bearing
32 a counterfeit mark in violation of this section. This
33 subdivision shall not be construed to abrogate or limit any
34 civil rights or remedies for a trademark violation.

35 SEC. 143. Section 550 of the Penal Code is amended
36 to read:

37 550. (a) It is unlawful to do any of the following, or to
38 aid, abet, solicit, or conspire with any person to do any of
39 the following:



1 (1) Knowingly present or cause to be presented any
2 false or fraudulent claim for the payment of a loss or
3 injury, including payment of a loss or injury under a
4 contract of insurance.

5 (2) Knowingly present multiple claims for the same
6 loss or injury, including presentation of multiple claims to
7 more than one insurer, with an intent to defraud.

8 (3) Knowingly cause or participate in a vehicular
9 collision, or any other vehicular accident, for the purpose
10 of presenting any false or fraudulent claim.

11 (4) Knowingly present a false or fraudulent claim for
12 the payments of a loss for theft, destruction, damage, or
13 conversion of a motor vehicle, a motor vehicle part, or
14 contents of a motor vehicle.

15 (5) Knowingly prepare, make, or subscribe any
16 writing, with the intent to present or use it, or to allow it
17 to be presented, in support of any false or fraudulent
18 claim.

19 (6) Knowingly make or cause to be made any false or
20 fraudulent claim for payment of a health care benefit.

21 (7) Knowingly submit a claim for a health care benefit
22 ~~which~~ *that* was not used by, or on behalf of, the claimant.

23 (8) Knowingly present multiple claims for payment of
24 the same health care benefit with an intent to defraud.

25 (9) Knowingly present for payment any undercharges
26 for health care benefits on behalf of a specific claimant
27 unless any known overcharges for health care benefits for
28 that claimant are presented for reconciliation at that
29 same time.

30 (10) For purposes of paragraphs (6) to (9), inclusive,
31 a claim or a claim for payment of a health care benefit also
32 means a claim or claim for payment submitted by or on
33 the behalf of a provider of any workers' compensation
34 health benefits under the Labor Code.

35 (b) It is unlawful to do, or to knowingly assist or
36 conspire with any person to do, any of the following:

37 (1) Present or cause to be presented any written or
38 oral statement as part of, or in support of or opposition to,
39 a claim for payment or other benefit pursuant to an
40 insurance policy, knowing that the statement contains

1 any false or misleading information concerning any
2 material fact.

3 (2) Prepare or make any written or oral statement that
4 is intended to be presented to any insurer or any
5 insurance claimant in connection with, or in support of or
6 opposition to, any claim or payment or other benefit
7 pursuant to an insurance policy, knowing that the
8 statement contains any false or misleading information
9 concerning any material fact.

10 (3) Conceal, or knowingly fail to disclose the
11 occurrence of, an event that affects any person's initial or
12 continued right or entitlement to any insurance benefit
13 or payment, or the amount of any benefit or payment to
14 which the person is entitled.

15 (4) Prepare or make any written or oral statement,
16 intended to be presented to any insurer or producer for
17 the purpose of obtaining a motor vehicle insurance
18 policy, that the person to be the insured resides or is
19 domiciled in this state when, in fact, that person resides
20 or is domiciled in a state other than this state.

21 (c) (1) Every person who violates paragraph (1), (2),
22 (3), (4), or (5) of subdivision (a) is guilty of a felony
23 punishable by imprisonment in the state prison for two,
24 three, or five years, and by a fine not exceeding fifty
25 thousand dollars (\$50,000), unless the value of the fraud
26 exceeds fifty thousand dollars (\$50,000), in which event
27 the fine may not exceed double of the value of the fraud.

28 (2) Every person who violates paragraph (6), (7), (8),
29 or (9) of subdivision (a) is guilty of a public offense.

30 (A) Where the claim or amount at issue exceeds four
31 hundred dollars (\$400), the offense is punishable by
32 imprisonment in the state prison for two, three, or five
33 years, *or* by a fine not exceeding fifty thousand dollars
34 (\$50,000), or by both that imprisonment and fine, unless
35 the value of the fraud exceeds fifty thousand dollars
36 (\$50,000), in which event the fine may not exceed double
37 the value of the fraud, or by imprisonment in a county jail
38 not to exceed one year, by a fine of not more than one
39 thousand dollars (\$1,000), or by both that imprisonment
40 and fine.

(B) Where the claim or amount at issue is four hundred dollars (\$400) or less, the offense is punishable by imprisonment in a county jail not to exceed six months, *or* by a fine of not more than one thousand dollars (\$1,000), or by both that imprisonment and fine, unless the aggregate amount of the claims or amount at issue exceeds four hundred dollars (\$400) in any ~~12-consecutive~~ *12-consecutive-month* period, in which case the claims or amounts may be charged as in subparagraph (A).

(3) Every person who violates paragraph (1), (2), (3), or (4) of subdivision (b) shall be punished by imprisonment in the state prison for two, three, or five years, *or* by a fine not exceeding fifty thousand dollars (\$50,000), unless the value of the fraud exceeds fifty thousand dollars (\$50,000), in which event the fine may not exceed double the value of the fraud, *or* by both that imprisonment and fine; *or* by imprisonment in a county jail not to exceed one year, *or* by a fine of not more than one thousand dollars (\$1,000), or by both that imprisonment and fine.

(d) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of a sentence be suspended for, any adult person convicted of felony violations of this section who previously has been convicted of felony violations of this section or Section 548, or of Section 1871.4 of the Insurance Code, or former Section 556 of the Insurance Code, or former Section 1871.1 of the Insurance Code as an adult under charges separately brought and tried two or more times. The existence of any fact ~~which~~ *that* would make a person ineligible for probation under this subdivision shall be alleged in the information or indictment, and either admitted by the defendant in an open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

Except ~~where~~ *when* the existence of the fact was not admitted or found to be true or the court finds that a prior

1 felony conviction was invalid, the court shall not strike or
2 dismiss any prior felony convictions alleged in the
3 information or indictment.

4 This subdivision ~~shall~~ *does* not prohibit the
5 adjournment of criminal proceedings pursuant to
6 Division 3 (commencing with Section 3000) ~~or~~, or
7 Division 6 (commencing with Section 6000) of, the
8 Welfare and Institutions Code.

9 (e) Except as otherwise provided in subdivision (f),
10 any person who violates subdivision (a) or (b) and who
11 has a prior felony conviction of an offense set forth in
12 either subdivision (a) *or* (b), in Section 548, in Section
13 1871.4 of the Insurance Code, in former Section 556 of the
14 Insurance Code, or in former Section 1871.1 of the
15 Insurance Code shall receive a two-year enhancement for
16 each prior felony conviction in addition to the sentence
17 provided in subdivision (c). The existence of any fact
18 ~~which~~ *that* would subject a person to a penalty
19 enhancement shall be alleged in the information or
20 indictment and either admitted by the defendant in open
21 court, or found to be true by the jury trying the issue of
22 guilt or by the court where guilt is established by plea of
23 guilty or nolo contendere or by trial by the court sitting
24 without a jury. Any person who violates this section shall
25 be subject to appropriate orders of restitution pursuant to
26 Section 13967 of the Government Code.

27 (f) Any person who violates paragraph (3) of
28 subdivision (a) and who has two prior felony convictions
29 for a violation of paragraph (3) of subdivision (a) shall
30 receive a five-year enhancement in addition to the
31 sentence provided in subdivision (c). The existence of
32 any fact—~~which~~ *that* would subject a person to a penalty
33 enhancement shall be alleged in the information or
34 indictment and either admitted by the defendant in open
35 court, or found to be true by the jury trying the issue of
36 guilt or by the court where guilt is established by plea of
37 guilty or nolo contendere or by trial by the court sitting
38 without a jury.

39 (g) Except as otherwise provided in Section 12022.7,
40 any person who violates paragraph (3) of subdivision (a)

1 shall receive a two-year enhancement for each person
2 other than an accomplice who suffers serious bodily
3 injury resulting from the vehicular collision or accident in
4 a violation of paragraph (3) of subdivision (a).

5 ~~(h) No portion of this~~ This section shall *not* be
6 construed to preclude the applicability of any other
7 provision of criminal law or equitable remedy that applies
8 or may apply to any act committed or alleged to have
9 been committed by a person.

10 SEC. 144. Section 594 of the Penal Code, as amended
11 by Section 1.5 of Chapter 853 of the Statutes of 1998, is
12 amended to read:

13 594. (a) Every person who maliciously commits any
14 of the following acts with respect to any real or personal
15 property not his or her own, in cases other than those
16 specified by state law, is guilty of vandalism:

17 (1) Defaces with graffiti or other inscribed material.

18 (2) Damages.

19 (3) Destroys.

20 Whenever a person violates this subdivision with
21 respect to real property, vehicles, signs, fixtures, or
22 furnishings belonging to any public entity, as defined by
23 Section 811.2 of the Government Code, or the federal
24 government, it shall be a permissive inference that the
25 person neither owned the property nor had the
26 permission of the owner to deface, damage, or destroy the
27 property.

28 (b) (1) If the amount of defacement, damage, or
29 destruction is fifty thousand dollars (\$50,000) or more,
30 vandalism is punishable by imprisonment in the state
31 prison or in a county jail not exceeding one year, or by a
32 fine of not more than fifty thousand dollars (\$50,000), or
33 by both that fine and imprisonment.

34 (2) If the amount of defacement, damage, or
35 destruction is five thousand dollars (\$5,000) or more but
36 less than fifty thousand dollars (\$50,000), vandalism is
37 punishable by imprisonment in the state prison, or in a
38 county jail not exceeding one year, or by a fine of not
39 more than ten thousand dollars (\$10,000), or by both that
40 fine and imprisonment.

1 (3) If the amount of defacement, damage, or
2 destruction is four hundred dollars (\$400) or more but
3 less than five thousand dollars (\$5,000), vandalism is
4 punishable by imprisonment in a county jail not
5 exceeding one year, or by a fine of five thousand dollars
6 (\$5,000), or by both that fine and imprisonment.

7 (4) (A) If the amount of defacement, damage, or
8 destruction is less than four hundred dollars (\$400),
9 vandalism is punishable by imprisonment in a county jail
10 for not more than six months, or by a fine of not more than
11 one thousand dollars (\$1,000), or by both that fine and
12 imprisonment.

13 (B) If the amount of defacement, damage, or
14 destruction is less than four hundred dollars (\$400), and
15 the defendant has been previously convicted of
16 vandalism or affixing graffiti or other inscribed material
17 under Section 594, 594.3, 594.4, 640.5, 640.6, or 640.7,
18 vandalism is punishable by imprisonment in a county jail
19 for not more than one year, or by a fine of not more than
20 five thousand dollars (\$5,000), or by both that fine and
21 imprisonment.

22 (c) (1) Upon conviction of any person under this
23 section for acts of vandalism consisting of defacing
24 property with graffiti or other inscribed materials, the
25 court may, in addition to any punishment imposed under
26 subdivision (b), order the defendant to clean up, repair,
27 or replace the damaged property himself or herself, or, if
28 the jurisdiction has adopted a graffiti abatement
29 program, order the defendant, and his or her parents or
30 guardians if the defendant is a minor, to keep the
31 damaged property or another specified property in the
32 community free of graffiti for up to one year.
33 Participation of a parent or guardian is not required
34 under this subdivision if the court deems this
35 participation to be detrimental to the defendant, or if the
36 parent or guardian is a single parent who must care for
37 young children.

38 (2) Any city, county, or city and county may enact an
39 ordinance that provides *for* all of the following:

1 (A) ~~Upon~~ That upon conviction of any person
2 pursuant to this section for acts of vandalism, the court
3 may, in addition to any punishment imposed under
4 subdivision (b), provided that the court determines that
5 the defendant has the ability to pay any law enforcement
6 costs not exceeding two hundred fifty dollars (\$250),
7 order the defendant to pay all or part of the costs not to
8 exceed two hundred fifty dollars (\$250) incurred by a law
9 enforcement agency in identifying and apprehending
10 the defendant. The law enforcement agency shall
11 provide evidence of, and bear the burden of establishing,
12 the reasonable costs that it incurred in identifying and
13 apprehending the defendant.

14 (B) The law enforcement costs authorized to be paid
15 pursuant to this subdivision are in addition to any other
16 costs incurred or recovered by the law enforcement
17 agency, and payment of these costs does not in any way
18 limit, preclude, or restrict any other right, remedy, or
19 action otherwise available to the law enforcement
20 agency.

21 (d) If a minor is personally unable to pay a fine levied
22 for acts prohibited by this section, the parent of that
23 minor shall be liable for payment of the fine. A court may
24 waive payment of the fine, or any part thereof, by the
25 parent upon a finding of good cause.

26 (e) As used in this section, the term “graffiti or other
27 inscribed material” includes any unauthorized
28 inscription, word, figure, mark, or design that is written,
29 marked, etched, scratched, drawn, or painted on real or
30 personal property.

31 (f) As used in this section, “graffiti abatement
32 program” means a program adopted by a city, county, or
33 city and county by resolution or ordinance that provides
34 for the administration and financing of graffiti removal,
35 community education on the prevention of graffiti, and
36 enforcement of graffiti laws.

37 (g) The court may order any person ordered to
38 perform community service or graffiti removal pursuant
39 to paragraph (1) of subdivision (c) to undergo
40 counseling.

1 (h) No amount paid by a defendant in satisfaction of
2 a criminal matter shall be applied in satisfaction of the law
3 enforcement costs that may be imposed pursuant to this
4 section until all outstanding base fines, state and local
5 penalty assessments, restitution orders, and restitution
6 fines have been paid.

7 (i) This section shall remain in effect until January 1,
8 2002, and as of that date is repealed, unless a later enacted
9 statute that is enacted before January 1, 2002, deletes or
10 extends that date.

11 SEC. 145. Section 594 of the Penal Code, as added by
12 Section 1.6 of Chapter 853 of the Statutes of 1998, is
13 amended to read:

14 594. (a) Every person who maliciously commits any
15 of the following acts with respect to any real or personal
16 property not his or her own, in cases other than those
17 specified by state law, is guilty of vandalism:

18 (1) Defaces with graffiti or other inscribed material.

19 (2) Damages.

20 (3) Destroys.

21 Whenever a person violates this subdivision with
22 respect to real property, vehicles, signs, fixtures, or
23 furnishings belonging to any public entity, as defined by
24 Section 811.2 of the Government Code, or the federal
25 government, it shall be a permissive inference that the
26 person neither owned the property nor had the
27 permission of the owner to deface, damage, or destroy the
28 property.

29 (b) (1) If the amount of defacement, damage, or
30 destruction is fifty thousand dollars (\$50,000) or more,
31 vandalism is punishable by imprisonment in the state
32 prison or in a county jail not exceeding one year, or by a
33 fine of not more than fifty thousand dollars (\$50,000), or
34 by both that fine and imprisonment.

35 (2) If the amount of defacement, damage, or
36 destruction is five thousand dollars (\$5,000) or more but
37 less than fifty thousand dollars (\$50,000), vandalism is
38 punishable by imprisonment in the state prison, or in a
39 county jail not exceeding one year, or by a fine of not

1 more than ten thousand dollars (\$10,000), or by both that
2 fine and imprisonment.

3 (3) If the amount of defacement, damage, or
4 destruction is four hundred dollars (\$400) or more but
5 less than five thousand dollars (\$5,000), vandalism is
6 punishable by imprisonment in a county jail not
7 exceeding one year, or by a fine of five thousand dollars
8 (\$5,000), or by both that fine and imprisonment.

9 (4) (A) If the amount of defacement, damage, or
10 destruction is less than four hundred dollars (\$400),
11 vandalism is punishable by imprisonment in a county jail
12 for not more than six months, or by a fine of not more than
13 one thousand dollars (\$1,000), or by both that fine and
14 imprisonment.

15 (B) If the amount of defacement, damage, or
16 destruction is less than four hundred dollars (\$400), and
17 the defendant has been previously convicted of
18 vandalism or affixing graffiti or other inscribed material
19 under Section 594, 594.3, 594.4, 640.5, 640.6, or 640.7,
20 vandalism is punishable by imprisonment in a county jail
21 for not more than one year, or by a fine of not more than
22 five thousand dollars (\$5,000), or by both that fine and
23 imprisonment.

24 (c) Upon conviction of any person under this section
25 for acts of vandalism consisting of defacing property with
26 graffiti or other inscribed materials, the court may, in
27 addition to any punishment imposed under subdivision
28 (b), order the defendant to clean up, repair, or replace
29 the damaged property himself or herself, or, if the
30 jurisdiction has adopted a graffiti abatement program,
31 order the defendant, and his or her parents or guardians
32 if the defendant is a minor, to keep the damaged property
33 or another specified property in the community free of
34 graffiti for up to one year. Participation of a parent or
35 guardian is not required under this subdivision if the
36 court deems this participation to be detrimental to the
37 defendant, or if the parent or guardian is a single parent
38 who must care for young children.

39 (d) If a minor is personally unable to pay a fine levied
40 for acts prohibited by this section, the parent of that

1 minor shall be liable for payment of the fine. A court may
2 waive payment of the fine, or any part thereof, by the
3 parent upon a finding of good cause.

4 (e) As used in this section, the term “graffiti or other
5 inscribed material” includes any unauthorized
6 inscription, word, figure, mark, or design that is written,
7 marked, etched, scratched, drawn, or painted on real or
8 personal property.

9 (f) As used in this section, “graffiti abatement
10 program” means a program adopted by a city, county, or
11 city and county by resolution or ordinance that provides
12 for the administration and financing of graffiti removal,
13 community education on the prevention of graffiti, and
14 enforcement of graffiti laws.

15 (g) The court may order any person ordered to
16 perform community service or graffiti removal pursuant
17 to paragraph (1) of subdivision (c) to undergo
18 counseling.

19 (h) This section shall become operative on January 1,
20 2002.

21 SEC. 146. Section 626.9 of the Penal Code is amended
22 to read:

23 626.9. (a) This section shall be known, and may be
24 cited, as the Gun-Free School Zone Act of 1995.

25 (b) Any person who possesses a firearm in a place that
26 the person knows, or reasonably should know, is a school
27 zone, as defined in paragraph (1) of subdivision (e),
28 unless it is with the written permission of the school
29 district superintendent, his or her designee, or equivalent
30 school authority, shall be punished as specified in
31 subdivision (f).

32 (c) Subdivision (b)—~~shall~~ *does* not apply to the
33 possession of a firearm under any of the following
34 circumstances:

35 (1) Within a place of residence or place of business or
36 on private property, if the place of residence, place of
37 business, or private property is not part of the school
38 grounds and the possession of the firearm is otherwise
39 lawful.



1 (2) ~~The~~ *When the* firearm is an unloaded pistol,
2 revolver, or other firearm capable of being concealed on
3 the person and is in a locked container or within the
4 locked trunk of a motor vehicle.

5 This section—~~shall~~ *does* not prohibit or limit the
6 otherwise lawful transportation of any other firearm,
7 other than a pistol, revolver, or other firearm capable of
8 being concealed on the person, in accordance with state
9 law.

10 (3) When the person possessing the firearm
11 reasonably believes that he or she is in grave danger
12 because of circumstances forming the basis of a current
13 restraining order issued by a court against another person
14 or persons who has or have been found to pose a threat
15 to his or her life or safety. This subdivision may not apply
16 when the circumstances involve a mutual restraining
17 order issued pursuant to Division 10 (commencing with
18 Section 6200) of the Family Code absent a factual finding
19 of a specific threat to the person's life or safety. Upon a
20 trial for violating subdivision (b), the trier of a fact shall
21 determine whether the defendant was acting out of a
22 reasonable belief that he or she was in grave danger.

23 (4) ~~The~~ *When the* person is exempt from the
24 prohibition against carrying a concealed firearm
25 pursuant to subdivision (b), (d), (e), or (h) of Section
26 12027.

27 (d) Except as provided in subdivision (b), it shall be
28 unlawful for any person, with reckless disregard for the
29 safety of another, to discharge, or attempt to discharge,
30 a firearm in a school zone, as defined in paragraph (1) of
31 subdivision (e).

32 The prohibition ~~of~~ *contained in* this subdivision—~~shall~~
33 *does* not apply to the discharge of a firearm to the extent
34 that the conditions of paragraph (1) of subdivision (c) are
35 satisfied.

36 (e) As used in this section, the following definitions
37 shall apply:

38 (1) "School zone" means an area in, or on the grounds
39 of, a public or private school providing instruction in
40 kindergarten or grades 1 to 12, inclusive, ~~and~~ *or* within a

1 distance of 1,000 feet from the grounds of the public or
2 private school.

3 (2) “Firearm” has the same meaning as that term is
4 given in Section 12001.

5 (3) “Locked container” has the same meaning as that
6 term is given in subdivision (c) of Section 12026.1.

7 (4) “Concealed firearm” has the same meaning as that
8 term is given in Sections 12025 and 12026.1.

9 (f) (1) Any person who violates subdivision (b) by
10 possessing a firearm in, or on the grounds of, a public or
11 private school providing instruction in kindergarten or
12 grades 1 to 12, inclusive, shall be punished by
13 imprisonment in the state prison for two, three, or five
14 years.

15 (2) Any person who violates subdivision (b) by
16 possessing a firearm within a distance of 1,000 feet from
17 the grounds of a public or private school providing
18 instruction in kindergarten or grades 1 to 12, inclusive,
19 shall be punished as follows:

20 (A) By imprisonment in the state prison for two, three,
21 or five years, if any of the following circumstances apply:

22 (i) If the person previously has been convicted of any
23 felony, or of any crime made punishable by Chapter 1
24 (commencing with Section 12000) of Title 2 of Part 4.

25 (ii) If the person is within a class of persons prohibited
26 from possessing or acquiring a firearm pursuant to
27 Section 12021 or 12021.1 of this code or Section 8100 or
28 8103 of the Welfare and Institutions Code.

29 (iii) If the firearm is any pistol, revolver, or other
30 firearm capable of being concealed upon the person and
31 the offense is punished as a felony pursuant to Section
32 12025.

33 (B) By imprisonment in a county jail for not more than
34 one year or by imprisonment in the state prison for two,
35 three, or five years, in all cases other than those specified
36 in subparagraph (A).

37 (3) Any person who violates subdivision (d) shall be
38 punished by imprisonment in the state prison for three,
39 five, or seven years.

1 (g) (1) Every person convicted under this section for
2 a misdemeanor violation of subdivision (b) who has been
3 convicted previously of a misdemeanor offense
4 enumerated in Section 12001.6 shall be punished by
5 imprisonment in a county jail for not less than three
6 months, or if probation is granted or if the execution or
7 imposition of sentence is suspended, it shall be a condition
8 thereof that he or she be imprisoned in a county jail for
9 not less than three months.

10 (2) Every person convicted under this section of a
11 felony violation of subdivision (b) or (d) who has been
12 convicted previously of a misdemeanor offense
13 enumerated in Section 12001.6, if probation is granted or
14 if the execution of sentence is suspended, it shall be a
15 condition thereof that he or she be imprisoned in a county
16 jail for not less than three months.

17 (3) Every person convicted under this section for a
18 felony violation of subdivision (b) or (d) who has been
19 convicted previously of any felony, or of any crime made
20 punishable by Chapter 1 (commencing with Section
21 12000) of Title 2 of Part 4, if probation is granted or if the
22 execution or imposition of sentence is suspended, it shall
23 be a condition thereof that he or she be imprisoned in a
24 county jail for not less than three months.

25 (4) The court shall apply the three-month minimum
26 sentence specified in this subdivision, except in unusual
27 cases where the interests of justice would best be served
28 by granting probation or suspending the execution or
29 imposition of sentence without the minimum
30 imprisonment required in this subdivision or by granting
31 probation or suspending the execution or imposition of
32 sentence with conditions other than those set forth in this
33 subdivision, in which case the court shall specify on the
34 record and shall enter on the minutes the circumstances
35 indicating that the interests of justice would best be
36 served by this disposition.

37 (h) Notwithstanding Section 12026, any person who
38 brings or possesses a loaded firearm upon the grounds of
39 a campus of, or buildings owned or operated for student
40 housing, teaching, research, or administration by, a public

1 or private university or college, that are contiguous or are
2 clearly marked university property, unless it is with the
3 written permission of the university or college president,
4 his or her designee, or equivalent university or college
5 authority, shall be punished by imprisonment in the state
6 prison for two, three, or four years. Notwithstanding
7 subdivision (k), a university or college shall post a
8 prominent notice at primary entrances on noncontiguous
9 property stating that firearms are prohibited on that
10 property pursuant to this subdivision.

11 ~~(h)~~

12 (i) Notwithstanding Section 12026, any person who
13 brings or possesses a firearm upon the grounds of a
14 campus of, or buildings owned or operated for student
15 housing, teaching, research, or administration by, a public
16 or private university or college, that are contiguous or are
17 clearly marked university property, unless it is with the
18 written permission of the university or college president,
19 his or her designee, or equivalent university or college
20 authority, shall be punished by imprisonment in the state
21 prison for one, two, or three years. Notwithstanding
22 subdivision (k), a university or college shall post a
23 prominent notice at primary entrances on noncontiguous
24 property stating that firearms are prohibited on that
25 property pursuant to this subdivision.

26 (j) For purposes of this section, a firearm shall be
27 deemed to be loaded when there is an unexpended
28 cartridge or shell, consisting of a case ~~which~~ *that* holds a
29 charge of powder and a bullet or shot, in, or attached in
30 any manner to, the firearm, including, but not limited to,
31 in the firing chamber, magazine, or clip thereof attached
32 to the firearm. A muzzle-loader firearm shall be deemed
33 to be loaded when it is capped or primed and has a
34 powder charge and ball or shot in the barrel or cylinder.

35 (k) This section ~~shall~~ *does* not require that notice be
36 posted regarding the proscribed conduct.

37 (l) This section ~~shall~~ *does* not apply to a duly appointed
38 peace officer as defined in Chapter 4.5 (commencing
39 with Section 830) of Title 3 of Part 2, a full-time paid peace
40 officer of another state or the federal government who is

1 carrying out official duties while in California, any person
2 summoned by any of these officers to assist in making
3 arrests or preserving the peace while he or she is actually
4 engaged in assisting the officer, a member of the military
5 forces of this state or of the United States who is engaged
6 in the performance of his or her duties, a person holding
7 a valid license to carry the firearm pursuant to Article 3
8 (commencing with Section 12050) of Chapter 1 of Title
9 2 of Part 4, or an armored vehicle guard, engaged in the
10 performance of his or her duties, as defined in subdivision
11 (e) of Section 7521 of the Business and Professions Code.

12 (m) This section—~~shall~~ *does* not apply to a security
13 guard authorized to carry a loaded firearm pursuant to
14 Section 12031.

15 (n) This section—~~shall~~ *does* not apply to an existing
16 shooting range at a public or private school or university
17 or college campus.

18 (o) This section—~~shall~~ *does* not apply to an honorably
19 retired peace officer authorized to carry a concealed or
20 loaded firearm pursuant to subdivision (a) or (i) of
21 Section 12027 or paragraph (1) or (8) of subdivision (b)
22 of Section 12031.

23 SEC. 147. Section 653m of the Penal Code is amended
24 to read:

25 653m. (a) Every person who, with intent to annoy,
26 telephones or makes contact by means of an electronic
27 communication device with another and addresses to or
28 about the other person any obscene language or
29 addresses to the other person any threat to inflict injury
30 to the person or property of the person addressed or any
31 member of his or her family, is guilty of a misdemeanor.
32 Nothing in this subdivision shall apply to telephone calls
33 or electronic contacts made in good faith.

34 (b) Every person who makes repeated telephone calls
35 or makes repeated contact by means of an electronic
36 communication device with intent to annoy another
37 person at his or her residence, is, whether or not
38 conversation ensues from making the telephone call or
39 electronic contact, guilty of a misdemeanor. Nothing in

1 this subdivision shall apply to telephone calls or electronic
2 contacts made in good faith.

3 (c) Every person who makes repeated telephone calls
4 or makes repeated contact by means of an electronic
5 communication device with the intent to annoy another
6 person at his or her place of work is guilty of a
7 misdemeanor punishable by a fine of not more than one
8 thousand dollars (\$1,000), or by imprisonment in a county
9 jail for not more than one year, or by both—~~the~~ *that* fine
10 and imprisonment. Nothing in this subdivision shall apply
11 to telephone calls or electronic contacts made in good
12 faith. This subdivision applies only if one or both of the
13 following circumstances exist:

14 (1) There is a temporary restraining order, an
15 injunction, or any other court order, or any combination
16 of these court orders, in effect prohibiting the behavior
17 described in this section.

18 (2) The person makes repeated telephone calls or
19 makes repeated contact by means of an electronic
20 communication device with the intent to annoy another
21 person at his or her place of work, totaling more than 10
22 times in a 24-hour period, whether or not conversation
23 ensues from making the telephone call or electronic
24 contact, and the repeated telephone calls or electronic
25 contacts are made to the workplace of an adult or fully
26 emancipated minor who is a spouse, former spouse,
27 cohabitant, former cohabitant, or person with whom the
28 person has a child or has had a dating or engagement
29 relationship or is having a dating or engagement
30 relationship.

31 (d) Any offense committed by use of a telephone may
32 be deemed to have been committed where the telephone
33 call or calls were made or received. Any offense
34 committed by use of an electronic communication device
35 or medium, including the Internet, may be deemed to
36 have been committed ~~where~~ *when* the electronic
37 communication or communications were originally sent
38 or first viewed by the recipient.

39 (e) Subdivision (a), (b), or (c) is violated when the
40 person acting with intent to annoy makes a telephone call



1 requesting a return call and performs the acts prohibited
2 under subdivision (a), (b), or (c) upon receiving the
3 return call.

4 (f) If probation is granted, or the execution or
5 imposition of sentence is suspended, for any person
6 convicted under this section, the court may order as a
7 condition of probation that the person participate in
8 counseling.

9 (g) For purposes of this section, the term “electronic
10 communication device” includes, but is not limited to,
11 telephones, cellular phones, computers, video recorders,
12 fax machines, or pagers. “Electronic communication” has
13 the same meaning as the term defined in Subsection 12
14 of Section 2510 of Title 18 of the United States Code.

15 SEC. 148. Section 790 of the Penal Code is amended
16 to read:

17 790. (a) The jurisdiction of a criminal action for
18 murder or manslaughter is in the county where the fatal
19 injury was inflicted or in the county in which the injured
20 party died or in the county in which his or her body was
21 found. However, if the defendant is indicted in the county
22 in which the fatal injury was inflicted, at any time before
23 his or her trial in another county, the sheriff of the other
24 county shall, if the defendant is in custody, deliver the
25 defendant upon demand to the sheriff of the county in
26 which the fatal injury was inflicted. When the fatal injury
27 was inflicted and the injured person died or his or her
28 body was found within five hundred yards of the
29 boundary of two or more counties, jurisdiction is in either
30 county.

31 (b) ~~In any case in which~~ *If* a defendant is charged with
32 a special circumstance pursuant to paragraph (3) of
33 subdivision (a) of Section 190.2, the jurisdiction for any
34 charged murder, and for any crimes properly joinable
35 with that murder, shall be in any county that has
36 jurisdiction pursuant to subdivision (a) for one or more
37 of the murders charged in a single complaint or
38 indictment as long as the charged murders are
39 “connected together in their commission,” as that phrase
40 is used in Section 954, and subject to a hearing in the

1 jurisdiction where the prosecution is attempting to
2 consolidate the charged murders. If the charged murders
3 are not joined or consolidated, the murder that was
4 charged outside of the county that has jurisdiction
5 pursuant to subdivision (a); shall be returned to that
6 county.

7 SEC. 149. Section 831.5 of the Penal Code, as
8 amended by Section 8 of Chapter 606 of the Statutes of
9 1998, is amended to read:

10 831.5. (a) As used in this section, a custodial officer is
11 a public officer, not a peace officer, employed by a law
12 enforcement agency of San Diego County, Fresno
13 County, Kern County, Stanislaus County, Riverside
14 County, or a county having a population of 425,000 or less
15 who has the authority and responsibility for maintaining
16 custody of prisoners and performs tasks related to the
17 operation of a local detention facility used for the
18 detention of persons usually pending arraignment or
19 upon court order either for their own safekeeping or for
20 the specific purpose of serving a sentence therein.
21 Custodial officers of a county shall be employees of, and
22 under the authority of, the sheriff, except in counties in
23 which the sheriff, as of July 1, 1993, is not in charge of and
24 the sole and exclusive authority to keep the county jail
25 and the prisoners in it. A custodial officer includes a
26 person designated as a correctional officer, jailer, or other
27 similar title. The duties of a custodial officer may include
28 the serving of warrants, court orders, writs, and
29 subpoenas in the detention facility or under
30 circumstances arising directly out of maintaining custody
31 of prisoners and related tasks. In counties having a
32 population of 100,000 or less, a custodial officer may be
33 assigned by the sheriff as a court bailiff on an interim basis,
34 and, when under the direction of the sheriff, a custodial
35 officer assigned as a court bailiff may carry or possess
36 firearms.

37 (b) Notwithstanding any other provision of law,
38 during a state of emergency as defined in Section 8558 of
39 the Government Code, a custodial officer may be
40 assigned limited law enforcement responsibilities under

1 the supervision of a peace officer. While on this
2 assignment, the custodial officer may exercise the powers
3 of arrest pursuant to Section 836.5.

4 (c) A custodial officer has no right to carry or possess
5 firearms in the performance of his or her prescribed
6 duties, except, under the direction of the sheriff or chief
7 of police, while assigned as a court bailiff or engaged in
8 transporting prisoners, guarding hospitalized prisoners,
9 or suppressing jail riots, lynchings, escapes, or rescues in
10 or about a detention facility falling under the care and
11 custody of the sheriff or chief of police.

12 (d) Each person described in this section as a custodial
13 officer shall, within 90 days following the date of the initial
14 assignment to that position, satisfactorily complete the
15 training course specified in Section 832. In addition, each
16 person designated as a custodial officer shall, within one
17 year following the date of the initial assignment as a
18 custodial officer, have satisfactorily met the minimum
19 selection and training standards prescribed by the Board
20 of Corrections pursuant to Section 6035. Persons
21 designated as custodial officers, before the expiration of
22 the 90-day and one-year periods described in this
23 subdivision, who have not yet completed the required
24 training, shall not carry or possess firearms in the
25 performance of their prescribed duties, but may perform
26 the duties of a custodial officer only while under the
27 direct supervision of a peace officer, as described in
28 Section 830.1, who has completed the training prescribed
29 by the Commission on Peace Officer Standards and
30 Training, or a custodial officer who has completed the
31 training required in this section.

32 (e) At any time *that* 20 or more custodial officers are
33 on duty, there shall be at least one peace officer, as
34 described in Section 830.1, on duty at the same time to
35 supervise the performance of the custodial officers.

36 (f) This section shall not be construed to confer any
37 authority upon any custodial officer except while on duty.

38 (g) A custodial officer may use reasonable force in
39 establishing and maintaining custody of persons
40 delivered to him or her by a law enforcement officer, may

1 make arrests for misdemeanors and felonies within the
2 local detention facility pursuant to a duly issued warrant,
3 may make warrantless arrests pursuant to Section 836.5
4 only during the duration of his or her job, may release
5 without further criminal process persons arrested for
6 intoxication, and may release misdemeanants on citation
7 to appear in lieu of or after booking.

8 (h) This section shall remain in effect only until
9 January 1, 2003, and as of that date is repealed, unless a
10 later enacted statute, that is enacted before January 1,
11 2003, deletes or extends that date.

12 SEC. 150. Section 831.5 of the Penal Code, as added by
13 Section 8.5 of Chapter 606 of the Statutes of 1998, is
14 amended to read:

15 831.5. (a) As used in this section, a custodial officer is
16 a public officer, not a peace officer, employed by a law
17 enforcement agency of San Diego County, Fresno
18 County, Kern County, Stanislaus County, Riverside
19 County, or a county having a population of 425,000 or less
20 who has the authority and responsibility for maintaining
21 custody of prisoners and performs tasks related to the
22 operation of a local detention facility used for the
23 detention of persons usually pending arraignment or
24 upon court order either for their own safekeeping or for
25 the specific purpose of serving a sentence therein.
26 Custodial officers of a county shall be employees of, and
27 under the authority of, the sheriff, except in counties in
28 which the sheriff, as of July 1, 1993, is not in charge of and
29 the sole and exclusive authority to keep the county jail
30 and the prisoners in it. A custodial officer includes a
31 person designated as a correctional officer, jailer, or other
32 similar title. The duties of a custodial officer may include
33 the serving of warrants, court orders, writs, and
34 subpoenas in the detention facility or under
35 circumstances arising directly out of maintaining custody
36 of prisoners and related tasks.

37 (b) A custodial officer has no right to carry or possess
38 firearms in the performance of his or her prescribed
39 duties, except, under the direction of the sheriff or chief
40 of police, while engaged in transporting prisoners;



1 guarding hospitalized prisoners; or suppressing jail riots,
2 lynchings, escapes, or rescues in or about a detention
3 facility falling under the care and custody of the sheriff or
4 chief of police.

5 (c) Each person described in this section as a custodial
6 officer shall, within 90 days following the date of the initial
7 assignment to that position, satisfactorily complete the
8 training course specified in Section 832. In addition, each
9 person designated as a custodial officer shall, within one
10 year following the date of the initial assignment as a
11 custodial officer, have satisfactorily met the minimum
12 selection and training standards prescribed by the Board
13 of Corrections pursuant to Section 6035. Persons
14 designated as custodial officers, before the expiration of
15 the 90-day and one-year periods described in this
16 subdivision, who have not yet completed the required
17 training, shall not carry or possess firearms in the
18 performance of their prescribed duties, but may perform
19 the duties of a custodial officer only while under the
20 direct supervision of a peace officer, as described in
21 Section 830.1, who has completed the training prescribed
22 by the Commission on Peace Officer Standards and
23 Training, or a custodial officer who has completed the
24 training required in this section.

25 (d) At any time *that* 20 or more custodial officers are
26 on duty, there shall be at least one peace officer, as
27 described in Section 830.1, on duty at the same time to
28 supervise the performance of the custodial officers.

29 (e) This section shall not be construed to confer any
30 authority upon any custodial officer except while on duty.

31 (f) A custodial officer may use reasonable force in
32 establishing and maintaining custody of persons
33 delivered to him or her by a law enforcement officer;,
34 may make arrests for misdemeanors and felonies within
35 the local detention facility pursuant to a duly issued
36 warrant;,, may make warrantless arrests pursuant to
37 Section 836.5 only during the duration of his or her job;,
38 may release without further criminal process persons
39 arrested for intoxication;,, and may release

1 misdemeanants on citation to appear in lieu of or after
2 booking.

3 (g) This section shall become operative on January 1,
4 2003.

5 SEC. 151. Section 1203.097 of the Penal Code is
6 amended to read:

7 1203.097. (a) If a person is granted probation for a
8 crime in which the victim is a person defined in Section
9 6211 of the Family Code, the terms of probation shall
10 include all of the following:

11 (1) A minimum period of probation of 36 months,
12 which may include a period of summary probation as
13 appropriate.

14 (2) A criminal court protective order protecting the
15 victim from further acts of violence, threats, stalking,
16 sexual abuse, and harassment, and, if appropriate,
17 containing residence exclusion or stay-away conditions.

18 (3) Notice to the victim of the disposition of the case.

19 (4) Booking the defendant within one week of
20 sentencing if the defendant has not already been booked.

21 (5) ~~The defendant shall pay a minimum of a~~
22 ~~two hundred dollar (\$200) payment~~ A *minimum*
23 *payment by the defendant of two hundred dollars (\$200)*
24 to be disbursed as specified in this paragraph. If, after a
25 hearing in court on the record, the court finds that the
26 defendant does not have the ability to pay, the court may
27 reduce or waive this fee.

28 ~~Out~~

29 *One-third of the moneys deposited with the county*
30 *treasurer pursuant to this section, ~~one-third~~ shall be*
31 *retained by counties and deposited in the domestic*
32 *violence programs special fund created pursuant to*
33 *Section 18305 of the Welfare and Institutions Code, to be*
34 *expended for the purposes of Chapter 5 (commencing*
35 *with Section 18290) of Part 6 of Division 9 of the Welfare*
36 *and Institutions Code. The remainder shall be*
37 *transferred, once a month, to the Controller for deposit*
38 *in equal amounts in the Domestic Violence Restraining*
39 *Order Reimbursement Fund and in the Domestic*
40 *Violence Training and Education Fund, which are*

1 hereby created, in an amount equal to two-thirds of funds
2 collected during the preceding month. Moneys deposited
3 into these funds to this section shall be available upon
4 appropriation by the Legislature and shall be distributed
5 each fiscal year as follows:

6 (A) Funds from the Domestic Violence Restraining
7 Order Reimbursement Fund shall be distributed to local
8 law enforcement or other criminal justice agencies for
9 state-mandated local costs resulting from the notification
10 requirements set forth in subdivision (a) of Section 6385
11 of the Family Code, based on the annual notification from
12 the Department of Justice of the number of restraining
13 orders issued and registered in the state domestic
14 violence restraining order registry maintained by the
15 Department of Justice, for the development and
16 maintenance of the domestic violence restraining order
17 data bank system.

18 (B) Funds from the Domestic Violence Training and
19 Education Fund shall support *a* statewide training and
20 education program to increase public awareness of
21 domestic violence and to improve the scope and quality
22 of services provided to the victims of domestic violence.
23 Grants to support this program shall be awarded on a
24 competitive basis and be administered by the State
25 Department of Health Services, in consultation with the
26 statewide domestic violence coalition, which is eligible to
27 receive funding under this section.

28 (6) Successful completion of a batterer's program, as
29 defined in subdivision (c), or if none is available, another
30 appropriate counseling program designated by the court,
31 for a period not less than one year with periodic progress
32 reports by the program to the court every three months
33 or less and weekly sessions of a minimum of two hours
34 classtime duration.

35 (7) (A) (i) The court shall order the defendant to
36 comply with all probation requirements, including the
37 requirements to attend counseling, keep all program
38 appointments, and pay program fees based upon the
39 ability to pay.

1 (ii) The terms of probation for offenders shall not be
2 lifted until all reasonable fees due to the counseling
3 program have been paid in full, but in no case shall
4 probation be extended beyond the term provided in
5 subdivision (a) of Section 1203.1. If the court finds that the
6 defendant does not have the ability to pay the fees based
7 on the defendant's changed circumstances, the court may
8 reduce or waive the fees.

9 (B) Upon request by the batterer's program, the court
10 shall provide the defendant's arrest report, prior
11 incidents of violence, and treatment history to the
12 program.

13 (8) The court also shall order the defendant to
14 perform a specified amount of appropriate community
15 service, as designated by the court. The defendant shall
16 present the court with proof of completion of community
17 service and the court shall determine if the community
18 service has been satisfactorily completed. If sufficient
19 staff and resources are available, the community service
20 shall be performed under the jurisdiction of the local
21 agency overseeing a community service program.

22 (9) If the program finds that the defendant is
23 unsuitable, the program shall immediately contact the
24 probation department or the court. The probation
25 department or court shall either recalendar the case for
26 hearing or refer the defendant to an appropriate
27 alternative batterer's program.

28 (10) (A) Upon recommendation of the program, a
29 court shall require a defendant to participate in
30 additional sessions throughout the probationary period,
31 unless it finds that it is not in the interests of justice to do
32 so, states its reasons on the record, and enters them into
33 the minutes. In deciding whether the defendant would
34 benefit from more sessions, the court shall consider
35 whether any of the following conditions exist:

36 (i) The defendant has been violence free for a
37 minimum of six months.

38 (ii) The defendant has cooperated and participated in
39 the batterer's program.

1 (iii) The defendant demonstrates an understanding of
2 and practices positive conflict resolution skills.

3 (iv) The defendant blames, degrades, or has
4 committed acts that dehumanize the victim or puts at risk
5 the victim's safety, including, but not limited to,
6 molesting, stalking, striking, attacking, threatening,
7 sexually assaulting, or battering the victim.

8 (v) The defendant demonstrates an understanding
9 that the use of coercion or violent behavior to maintain
10 dominance is unacceptable in an intimate relationship.

11 (vi) The defendant has made threats to harm anyone
12 in any manner.

13 (vii) The defendant has complied with applicable
14 requirements under paragraph (6) of subdivision (c) or
15 subparagraph (C) to receive alcohol counseling, drug
16 counseling, or both.

17 (viii) The defendant demonstrates acceptance of
18 responsibility for the abusive behavior perpetrated
19 against the victim.

20 (B) The program shall immediately report any
21 violation of the terms of the protective order, including
22 any new acts of violence or failure to comply with the
23 program requirements, to the court, the prosecutor, and,
24 if formal probation has been ordered, to the probation
25 department. The probationer shall file proof of
26 enrollment in a batterer's program with the court within
27 30 days of conviction.

28 (C) Concurrent with other requirements under this
29 section, in addition to, and not in lieu of, the batterer's
30 program, and unless prohibited by the referring court,
31 the probation department or the court may make
32 provisions for a defendant to use his or her resources to
33 enroll in a chemical dependency program or to enter
34 voluntarily a licensed chemical dependency recovery
35 hospital or residential treatment program that has a valid
36 license issued by the state to provide alcohol or drug
37 services to receive program participation credit, as
38 determined by the court. The probation department shall
39 document evidence of this hospital or residential
40 treatment participation in the defendant's program file.

1 (11) The conditions of probation may include, in lieu
2 of a fine, but not in lieu of the fund payment required
3 under paragraph (5), one or more of the following
4 requirements:

5 (A) That the defendant make payments to a battered
6 women's shelter, up to a maximum of five thousand
7 dollars (\$5,000).

8 (B) That the defendant reimburse the victim for
9 reasonable expenses that the court finds are the direct
10 result of the defendant's offense.

11 For any order to pay a fine, to make payments to a
12 battered women's shelter, or to pay restitution as a
13 condition of probation under this subdivision, the court
14 shall make a determination of the defendant's ability to
15 pay. Determination of a defendant's ability to pay may
16 include his or her future earning capacity. A defendant
17 shall bear the burden of demonstrating lack of his or her
18 ability to pay. Express findings by the court as to the
19 factors bearing on the amount of the fine shall not be
20 required. In no event shall any order to make payments
21 to a battered women's shelter be made if it would impair
22 the ability of the defendant to pay direct restitution to the
23 victim or court-ordered child support. ~~Where~~ *When* the
24 injury to a married person is caused in whole or in part by
25 the criminal acts of his or her spouse in violation of this
26 section, the community property shall not be used to
27 discharge the liability of the offending spouse for
28 restitution to the injured spouse, as required by Section
29 1203.04, as operative on or before August 2, 1995, or
30 Section 1202.4, or to a shelter for costs with regard to the
31 injured spouse, until all separate property of the
32 offending spouse is exhausted.

33 (12) If it appears to the prosecuting attorney, the
34 court, or the probation department that the defendant is
35 performing unsatisfactorily in the assigned program, is
36 not benefiting from counseling, or has engaged in
37 criminal conduct, upon request of the probation officer,
38 the prosecuting attorney, or on its own motion, the court,
39 as a priority calendar item, shall hold a hearing to
40 determine whether further sentencing should proceed.

1 The court may consider factors, including, but not limited
2 to, any violence by the defendant against the former or
3 a new victim while on probation and noncompliance with
4 any other specific condition of probation. If the court
5 finds that the defendant is not performing satisfactorily
6 in the assigned program, is not benefiting from the
7 program, has not complied with a condition of probation,
8 or has engaged in criminal conduct, the court shall
9 terminate the defendant's participation in the program
10 and shall proceed with further sentencing.

11 (b) If a person is granted formal probation for a crime
12 in which the victim is a person defined in Section 6211 of
13 the Family Code, in addition to the terms specified in
14 subdivision (a), all of the following shall apply:

15 (1) The probation department shall make an
16 investigation and take into consideration the defendant's
17 age, medical history, employment and service records,
18 educational background, community and family ties,
19 prior incidents of violence, police report, treatment
20 history, if any, demonstrable motivation, and other
21 mitigating factors in determining which batterer's
22 program would be appropriate for the defendant. This
23 information shall be provided to the batterer's program
24 if it is requested. The probation department shall also
25 determine which community programs the defendant
26 would benefit from and which of those programs would
27 accept the defendant. The probation department shall
28 report its findings and recommendations to the court.

29 (2) The court shall advise the defendant that the
30 failure to report to the probation department for the
31 initial investigation, as directed by the court, or the failure
32 to enroll in a specified program, as directed by the court
33 or the probation department, shall result in possible
34 further incarceration. The court, in the interests of
35 justice, may relieve the defendant from the prohibition
36 set forth in this subdivision based upon the defendant's
37 mistake or excusable neglect. Application for this relief
38 shall be filed within 20 court days of the missed deadline.
39 This time limitation may not be extended. A copy of any

1 application for relief shall be served on the office of the
2 prosecuting attorney.

3 (3) After the court orders the defendant to a batterer's
4 program, the probation department shall conduct an
5 initial assessment of the defendant, including, but not
6 limited to, all of the following:

7 (A) Social, economic, and family background.

8 (B) Education.

9 (C) Vocational achievements.

10 (D) Criminal history.

11 (E) Medical history.

12 (F) Substance abuse history.

13 (G) Consultation with the probation officer.

14 (H) Verbal consultation with the victim, only if the
15 victim desires to participate.

16 (I) Assessment of the future probability of the
17 defendant committing murder.

18 (4) The probation department shall attempt to notify
19 the victim regarding the requirements for the
20 defendant's participation in the batterer's program, as
21 well as regarding available victim resources. The victim
22 also shall be informed that attendance in any program
23 does not guarantee that an abuser will not be violent.

24 (c) The court or the probation department shall refer
25 defendants only to ~~batterers'~~ *batterer's* programs that
26 follow standards outlined in paragraph (1), which may
27 include, but are not limited to, lectures, classes, group
28 discussions, and counseling. The probation department
29 shall design and implement an approval and renewal
30 process for batterer's programs and shall solicit input
31 from criminal justice agencies and domestic violence
32 victim advocacy programs.

33 (1) The goal of a batterer's program under this section
34 shall be to stop domestic violence. A batterer's program
35 shall consist of the following components:

36 (A) Strategies to hold the defendant accountable for
37 the violence in a relationship, including, but not limited
38 to, providing the defendant with a written statement that
39 the defendant shall be held accountable for acts or threats
40 of domestic violence.

1 (B) A requirement that the defendant participate in
2 ongoing same-gender group sessions.

3 (C) An initial intake that provides written definitions
4 to the defendant of physical, emotional, sexual, economic,
5 and verbal abuse, and the techniques for stopping these
6 types of abuse.

7 (D) Procedures to inform the victim regarding the
8 requirements for the defendant's participation in the
9 intervention program as well as regarding available
10 victim resources. The victim also shall be informed that
11 attendance in any program does not guarantee that an
12 abuser will not be violent.

13 (E) A requirement that the defendant attend group
14 sessions free of chemical influence.

15 (F) Educational programming that examines, at a
16 minimum, gender roles, socialization, the nature of
17 violence, the dynamics of power and control, and the
18 effects of abuse on children and others.

19 (G) A requirement that excludes any couple
20 counseling or family counseling, or both.

21 (H) Procedures that give the program the right to
22 assess whether or not the defendant would benefit from
23 the program and *to* refuse to enroll the defendant if it is
24 determined *that* the defendant would not benefit from
25 the program, so long as the refusal is not because of the
26 defendant's inability to pay. If possible, the program shall
27 suggest an appropriate alternative program.

28 (I) Program staff who, to the extent possible, have
29 specific knowledge regarding, but not limited to, spousal
30 abuse, child abuse, sexual abuse, substance abuse, the
31 dynamics of violence and abuse, the law, and procedures
32 of the legal system.

33 (J) Program staff who are encouraged to utilize the
34 expertise, training, and assistance of local domestic
35 violence centers.

36 (K) A requirement that the defendant enter into a
37 written agreement with the program—~~that~~, *which* shall
38 include an outline of the contents of the program, the
39 attendance requirements, the requirement to attend
40 group sessions free of chemical influence, and a statement

1 that the defendant may be removed from the program if
2 it is determined that the defendant is not benefiting from
3 the program or is disruptive to the program.

4 (L) A requirement that the defendant sign a
5 confidentiality statement prohibiting disclosure of any
6 information obtained through participating in the
7 program or during group sessions regarding other
8 participants in the program.

9 (M) Program content that provides cultural and
10 ethnic sensitivity.

11 (N) A requirement of a written referral from the court
12 or probation department prior to permitting the
13 defendant to enroll in the program. The written referral
14 shall state the number of minimum sessions required by
15 the court.

16 (O) Procedures for submitting to the probation
17 department all of the following uniform written
18 responses:

19 (i) Proof of enrollment, to be submitted to the court
20 and the probation department and to include the fee
21 determined to be charged to the defendant, based upon
22 the ability to pay, for each session.

23 (ii) Periodic progress reports that include attendance,
24 fee payment history, and program compliance.

25 (iii) Final evaluation that includes the program's
26 evaluation of the defendant's progress, using the criteria
27 set forth in paragraph (4) of subdivision (a) and
28 recommendation for either successful or unsuccessful
29 termination or continuation in the program.

30 (P) A sliding fee schedule based on the defendant's
31 ability to pay. The batterer's program shall develop and
32 utilize a sliding fee scale that recognizes both the
33 defendant's ability to pay and the necessity of programs
34 to meet overhead expenses. An indigent defendant may
35 negotiate a deferred payment schedule, but shall pay a
36 nominal fee, if the defendant has the ability to pay the
37 nominal fee. Upon a hearing and a finding by the court
38 that the defendant does not have the financial ability to
39 pay the nominal fee, the court shall waive this fee. The
40 payment of the fee shall be made a condition of probation

1 if the court determines the defendant has the present
2 ability to pay the fee. The fee shall be paid during the
3 term of probation unless the program sets other
4 conditions. The acceptance policies shall be in
5 accordance with the scaled fee system.

6 (2) The court shall refer persons only to ~~batterer~~
7 *batterer's* programs that have been approved by the
8 probation department pursuant to paragraph (5). The
9 probation department shall do ~~all~~ *both* of the following:

10 (A) Provide for the issuance of a provisional approval,
11 provided that the applicant is in substantial compliance
12 with applicable laws and regulations and an urgent need
13 for approval exists. A provisional approval shall be
14 considered an authorization to provide services and shall
15 not be considered a vested right.

16 (B) If the probation department determines that a
17 program is not in compliance with standards set by the
18 department, the department shall provide written notice
19 of the noncompliant areas to the program. The program
20 shall submit a written plan of corrections within 14 days
21 from the date of the written notice on noncompliance. A
22 plan of correction shall include, but not be limited to, a
23 description of each corrective action and timeframe for
24 implementation. The department shall review and
25 approve all or any part of the plan of correction and notify
26 the program of approval or disapproval in writing. If the
27 program fails to submit a plan of correction or fails to
28 implement the approved plan of correction, the
29 department shall consider whether to revoke or suspend
30 approval and, upon revoking or suspending approval,
31 shall have the option to cease referrals of defendants
32 under this section.

33 (3) No program, regardless of its source of funding,
34 shall be approved unless it meets all of the following
35 standards:

36 (A) The establishment of guidelines and criteria for
37 education services, including standards of services that
38 may include lectures, classes, and group discussions.

39 (B) Supervision of the defendant for the purpose of
40 evaluating the person's progress in the program.

1 (C) Adequate reporting requirements to ensure that
2 all persons who, after being ordered to attend and
3 complete a program, may be identified for either failure
4 to enroll in, or failure to successfully complete, the
5 program or for the successful completion of the program
6 as ordered. The program shall notify the court and the
7 probation department in writing within the period of
8 time and in the manner specified by the court of any
9 person who fails to complete the program. Notification
10 shall be given if the program determines that the
11 defendant is performing unsatisfactorily or if the
12 defendant is not benefiting from the education,
13 treatment, or counseling.

14 (D) No victim shall be compelled to participate in a
15 program or counseling, and no program may condition a
16 defendant's enrollment on participation by the victim.

17 (4) In making referrals of indigent defendants to
18 approved ~~batterer~~ batterer's programs, the probation
19 department shall apportion these referrals evenly among
20 the approved programs.

21 (5) The probation department shall have the sole
22 authority to approve a batterer's program for probation.
23 The program shall be required to obtain only one
24 approval but shall renew that approval annually.

25 (A) The procedure for the approval of a new or
26 existing program shall include all of the following:

27 (i) The completion of a written application containing
28 necessary and pertinent information describing the
29 applicant program.

30 (ii) The demonstration by the program that it
31 possesses adequate administrative and operational
32 capability to operate a batterer's treatment program. The
33 program shall provide documentation to prove that the
34 program has conducted batterer's programs for at least
35 one year prior to application. This requirement may be
36 waived under subparagraph (A) of paragraph (2); if
37 there is no existing batterer's program in the city, county,
38 or city and county.



1 (iii) The onsite review of the program, including
2 monitoring of a session to determine that the program
3 adheres to applicable statutes and regulations.

4 (iv) The payment of the approval fee.

5 (B) The probation department shall fix a fee for
6 approval not to exceed two hundred fifty dollars (\$250)
7 and for approval renewal not to exceed two hundred fifty
8 dollars (\$250) every year in an amount sufficient to cover
9 its cost in administering the approval process under this
10 section. No fee shall be charged for the approval of local
11 governmental entities.

12 (C) The probation department has the sole authority
13 to approve the issuance, denial, suspension, or revocation
14 of approval and to cease new enrollments or referrals to
15 a batterer's program under this section. The probation
16 department shall review information relative to a
17 program's performance or failure to adhere to standards,
18 or both. The probation department may suspend or
19 revoke any approval issued under this subdivision or deny
20 an application to renew an approval or to modify the
21 terms and conditions of approval, based on grounds
22 established by probation, including, but not limited to,
23 ~~any~~ *either* of the following:

24 (i) Violation of this section by any person holding
25 approval or by a program employee in a program under
26 this section.

27 (ii) Misrepresentation of any material fact in obtaining
28 the approval.

29 (6) For defendants who are chronic users or serious
30 abusers of drugs or alcohol, standard components in the
31 program shall include concurrent counseling for
32 substance abuse and violent behavior, and in appropriate
33 cases, detoxification and abstinence from the abused
34 substance.

35 (7) The program shall conduct an exit conference that
36 ~~reflects~~ *assesses* the defendant's progress during ~~the~~
37 ~~defendant's~~ *his or her* participation in the batterer's
38 program.

39 SEC. 152. Section 1269b of the Penal Code is amended
40 to read:

1 1269b. (a) The officer in charge of a jail where an
2 arrested person is held in custody, an officer of a sheriff's
3 department or police department of a city who is in
4 charge of a jail or *is* employed at a fixed police or sheriff's
5 facility and is acting under an agreement with the agency
6 ~~which~~ *that* keeps the jail wherein an arrested person is
7 held in custody, an employee of a sheriff's department or
8 police department of a city who is assigned by—~~such the~~
9 department to collect bail, the clerk of the municipal
10 court of the judicial district in which the offense was
11 alleged to have been committed, and the clerk of the
12 superior court in which the case against the defendant is
13 pending may approve and accept bail in the amount fixed
14 by the warrant of arrest, schedule of bail, or order
15 admitting to bail in cash or surety bond executed by a
16 certified, admitted surety insurer as provided in the
17 Insurance Code, to issue and sign an order for the release
18 of the arrested person, and to set a time and place for the
19 appearance of the arrested person before the appropriate
20 court and give notice thereof.

21 (b) If a defendant has appeared before a judge of the
22 court on the charge contained in the complaint,
23 indictment, or information, the bail shall be in the amount
24 fixed by the judge at the time of the appearance; if that
25 appearance has not been made, the bail shall be in the
26 amount fixed in the warrant of arrest or, if no warrant of
27 arrest has been issued, the amount of bail shall be
28 pursuant to the uniform countywide schedule of bail for
29 the county in which the defendant is required to appear,
30 previously fixed and approved as provided in subdivisions
31 (c) and (d).

32 (c) It is the duty of the superior and municipal court
33 judges in each county to prepare, adopt, and annually
34 revise, by a majority vote, at a meeting called by the
35 presiding judge of the superior court of the county, a
36 uniform countywide schedule of bail for all bailable
37 felony offenses.

38 In adopting a uniform countywide schedule of bail for
39 all bailable offenses the judges shall consider the
40 seriousness of the offense charged. In considering the

1 seriousness of the offense charged the judges shall assign
2 an additional amount of required bail for each
3 aggravating or enhancing factor chargeable in the
4 complaint, including, but not limited to, additional bail
5 for charges alleging facts ~~which~~ *that* would bring a person
6 within any of the following sections: Section 667.5, 667.51,
7 667.6, 667.8, 667.85, 667.9, 667.10, 12022, 12022.1, 12022.2,
8 12022.3, 12022.4, 12022.5, 12022.53, 12022.6, 12022.7,
9 12022.8, or 12022.9 ~~of the Penal Code~~, or Section 11356.5,
10 11370.2, or 11370.4 of the Health and Safety Code.

11 In considering offenses wherein a violation of Chapter
12 6 (commencing with Section 11350) of Division 10 of the
13 Health and Safety Code is alleged, the judge shall assign
14 an additional amount of required bail for offenses
15 involving large quantities of controlled substances.

16 (d) The municipal court judges in each county, at a
17 meeting called by the presiding judge of the municipal
18 court at each county seat, or the superior court judges in
19 each county in which there is no municipal court, at a
20 meeting called by the presiding judge of the superior
21 court, shall prepare, adopt, and annually revise, by a
22 majority vote, a uniform, countywide schedule of bail for
23 all misdemeanor and infraction offenses except Vehicle
24 Code infractions. The penalty schedule for infraction
25 violations of the Vehicle Code shall be established by the
26 Judicial Council in accordance with Section 40310 of the
27 Vehicle Code.

28 (e) Each countywide bail schedule shall contain a list
29 of the offenses and the amounts of bail applicable thereto
30 as the judges determine to be appropriate. If the
31 schedules do not list all offenses specifically, they shall
32 contain a general clause for designated amounts of bail as
33 the judges of the county determine to be appropriate for
34 all the offenses not specifically listed in the schedules. A
35 copy of the countywide bail schedule shall be sent to the
36 officer in charge of the county jail, to the officer in charge
37 of each city jail within the county, to each superior and
38 municipal court judge and commissioner in the county,
39 and to the Judicial Council.

1 (f) Upon posting bail, the defendant or arrested
2 person shall be discharged from custody as to the offense
3 on which the bail is posted.

4 All money and surety bonds so deposited with an officer
5 authorized to receive bail shall be transmitted
6 immediately to the judge or clerk of the court by which
7 the order was made or warrant issued or bail schedule
8 fixed. If, in the case of felonies, an indictment is filed, the
9 judge or clerk of the court shall transmit all of the money
10 and surety bonds to the county clerk.

11 (g) If a defendant or arrested person so released fails
12 to appear at the time and in the court so ordered upon his
13 or her release from custody, Sections 1305 and 1306 apply.

14 SEC. 153. Section 1347 of the Penal Code, as amended
15 by Section 1.5 of Chapter 670 of the Statutes of 1998, is
16 amended to read:

17 1347. (a) It is the intent of the Legislature in enacting
18 this section to provide the court with discretion to employ
19 unusual court procedures to protect the rights of a child
20 witness, the rights of the defendant, and the integrity of
21 the judicial process. In exercising its discretion, the court
22 necessarily will be required to balance the rights of the
23 defendant or defendants against the need to protect a
24 child witness and to preserve the integrity of the court's
25 truthfinding function. This discretion is intended to be
26 used selectively when the facts and circumstances in the
27 individual case present compelling evidence of the need
28 to use these unusual procedures.

29 (b) Notwithstanding any other law, the court in any
30 criminal proceeding, upon written notice—~~of~~ by the
31 prosecutor made at least three days prior to the date of
32 the preliminary hearing or trial date on which the
33 testimony of the minor is scheduled, or during the course
34 of the proceeding on the court's own motion, may order
35 that the testimony of a minor 13 years of age or younger
36 at the time of the motion be taken by contemporaneous
37 examination and cross-examination in another place and
38 out of the presence of the judge, jury, defendant or
39 defendants, and attorneys, and communicated to the

1 courtroom by means of closed-circuit television, if the
2 court makes all of the following findings:

3 (1) The minor's testimony will involve a recitation of
4 the facts of either of the following:

5 (A) An alleged sexual offense committed on or with
6 the minor.

7 (B) The minor is a victim of a violent felony, as defined
8 in subdivision (c) of Section 667.5.

9 (2) The impact on the minor of one or more of the
10 factors enumerated in subparagraphs (A) to (D),
11 inclusive, is shown by clear and convincing evidence to
12 be so substantial as to make the minor unavailable as a
13 witness unless closed-circuit television is used.

14 (A) Threats of serious bodily injury to be inflicted on
15 the minor or a family member, of incarceration or
16 deportation of the minor or a family member, or of
17 removal of the minor from the family or dissolution of the
18 family, in order to prevent or dissuade the minor from
19 attending or giving testimony at any trial or court
20 proceeding, or to prevent the minor from reporting the
21 alleged sexual offense or from assisting in criminal
22 prosecution.

23 (B) Use of a firearm or any other deadly weapon
24 during the commission of the crime.

25 (C) Infliction of great bodily injury upon the victim
26 during the commission of the crime.

27 (D) Conduct on the part of the defendant or defense
28 counsel during the hearing or trial ~~which~~ *that* causes the
29 minor to be unable to continue his or her testimony.

30 In making the determination required by this section,
31 the court shall consider the age of the minor, the
32 relationship between the minor and the defendant or
33 defendants, any handicap or disability of the minor, and
34 the nature of the acts charged. The minor's refusal to
35 testify shall not alone constitute sufficient evidence that
36 the special procedure described in this section is
37 necessary ~~in order~~ to obtain the minor's testimony.

38 (3) The equipment available for use of closed-circuit
39 television would accurately communicate the image and

1 demeanor of the minor to the judge, jury, defendant or
2 defendants, and attorneys.

3 (c) If the court orders the use of closed-circuit
4 television, two-way closed-circuit television shall be used,
5 except that if the impact on the minor of one or more of
6 the factors enumerated in subparagraphs (A) to (D),
7 inclusive, of paragraph (2) of subdivision (b), is shown by
8 clear and convincing evidence to be so substantial as to
9 make the minor unavailable as a witness even if two-way
10 closed-circuit television is used, one-way closed-circuit
11 television may be used. The prosecution shall give the
12 defendant or defendants at least 30 days written notice of
13 the prosecution's intent to seek the use of one-way
14 closed-circuit television, unless good cause is shown to the
15 court why this 30-day notice requirement should not
16 apply.

17 (d) (1) The hearing on a motion brought pursuant to
18 this section shall be conducted out of the presence of the
19 jury.

20 (2) Notwithstanding Section 804 of the Evidence Code
21 or any other law, the court, in determining the merits of
22 the motion, shall not compel the minor to testify at the
23 hearing; nor shall the court deny the motion on the
24 ground that the minor has not testified.

25 (3) In determining whether the impact on an
26 individual child of one or more of the four factors
27 enumerated in paragraph (2) of subdivision (b) is so
28 substantial that the minor is unavailable as a witness
29 unless two-way or one-way closed-circuit television is
30 used, the court may question the minor in chambers, or
31 at some other comfortable place other than the
32 courtroom, on the record for a reasonable period of time
33 with the support person, the prosecutor, and defense
34 counsel present. The defendant or defendants shall not be
35 present. The court shall conduct the questioning of the
36 minor and shall not permit the prosecutor or defense
37 counsel to examine the minor. The prosecutor and
38 defense counsel shall be permitted to submit proposed
39 questions to the court prior to the session in chambers.
40 Defense counsel shall be afforded a reasonable

1 opportunity to consult with the defendant or defendants
2 prior to the conclusion of the session in chambers.

3 (e) When the court orders the testimony of a minor to
4 be taken in another place outside of the courtroom, the
5 court shall do all of the following:

6 (1) Make a brief statement on the record, outside of
7 the presence of the jury, of the reasons in support of its
8 order. While the statement need not include traditional
9 findings of fact, the reasons shall be set forth with
10 sufficient specificity to permit meaningful review and to
11 demonstrate that discretion was exercised in a careful,
12 reasonable, and equitable manner.

13 (2) Instruct the members of the jury that they are to
14 draw no inferences from the use of closed-circuit
15 television as a means of facilitating the testimony of the
16 minor.

17 (3) Instruct respective counsel, outside of the
18 presence of the jury, that they are to make no comment
19 during the course of the trial on the use of closed-circuit
20 television procedures.

21 (4) Instruct the support witness, outside of the
22 presence of the jury, that he or she is not to coach, cue,
23 or in any way influence or attempt to influence the
24 testimony of the minor.

25 (5) Order that a complete record of the examination
26 of the minor, including the images and voices of all
27 persons who in any way participate in the examination,
28 be made and preserved on videotape in addition to being
29 stenographically recorded. The videotape shall be
30 transmitted to the clerk of the court in which the action
31 is pending and shall be made available for viewing to the
32 prosecuting attorney, the defendant or defendants, and
33 his or her attorney during ordinary business hours. The
34 videotape shall be destroyed after five years have elapsed
35 from the date of entry of judgment. If an appeal is filed,
36 the tape shall not be destroyed until a final judgment on
37 appeal has been ordered. Any videotape ~~which~~ *that* is
38 taken pursuant to this section is subject to a protective
39 order of the court for the purpose of protecting the

1 privacy of the witness. This subdivision does not affect the
2 provisions of subdivision (b) of Section 868.7.

3 (f) When the court orders the testimony of a minor to
4 be taken in another place outside the courtroom, only the
5 minor, a support person designated pursuant to Section
6 868.5, a nonuniformed bailiff, and, after consultation with
7 the prosecution and the defense, a representative
8 appointed by the court, shall be physically present for the
9 testimony. A videotape shall record the image of the
10 minor and his or her testimony, and a separate videotape
11 shall record the image of the support person.

12 (g) When the court orders the testimony of a minor to
13 be taken in another place outside the courtroom, the
14 minor shall be brought into the judge's chambers prior to
15 the taking of his or her testimony to meet for a reasonable
16 period of time with the judge, the prosecutor, and
17 defense counsel. A support person for the minor shall also
18 be present. This meeting shall be for the purpose of
19 explaining the court process to the child and to allow the
20 attorneys an opportunity to establish rapport with the
21 child to facilitate later questioning by closed-circuit
22 television. No participant shall discuss the defendant or
23 defendants or any of the facts of the case with the minor
24 during this meeting.

25 (h) When the court orders the testimony of a minor to
26 be taken in another place outside the courtroom, nothing
27 in this section ~~shall prohibit~~ *prohibits* the court from
28 ordering the minor to be brought into the courtroom for
29 a limited purpose, including the identification of the
30 defendant or defendants as the court deems necessary.

31 (i) The examination shall be under oath, and the
32 defendant or defendants shall be able to see and hear the
33 minor witness and if two-way closed-circuit television is
34 used, the defendant's image shall be transmitted live to
35 the witness.

36 (j) Nothing in this section ~~shall affect~~ *affects* the
37 disqualification of witnesses pursuant to Section 701 of the
38 Evidence Code.

(k) The cost of examination by contemporaneous closed-circuit television ordered pursuant to this section shall be borne by the court out of its existing budget.

(l) The Judicial Council shall prepare and submit to the Legislature, on or before December 31, 2000, a report on the frequency of use and effectiveness of closed-circuit testimony.

(m) This section shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2001, deletes or extends that date.

SEC. 154. Section 1347 of the Penal Code, as added by Section 1.6 of Chapter 670 of the Statutes of 1998, is amended to read:

1347. (a) It is the intent of the Legislature in enacting this section to provide the court with discretion to employ unusual court procedures to protect the rights of a child witness, the rights of the defendant, and the integrity of the judicial process. In exercising its discretion, the court necessarily will be required to balance the rights of the defendant or defendants against the need to protect a child witness and to preserve the integrity of the court's truthfinding function. This discretion is intended to be used selectively when the facts and circumstances in the individual case present compelling evidence of the need to use these unusual procedures.

(b) Notwithstanding any other law, the court in any criminal proceeding, upon written notice—~~of~~ *by* the prosecutor made at least three days prior to the date of the preliminary hearing or trial date on which the testimony of the minor is scheduled, or during the course of the proceeding on the court's own motion, may order that the testimony of a minor 13 years of age or younger at the time of the motion be taken by contemporaneous examination and cross-examination in another place and out of the presence of the judge, jury, defendant or defendants, and attorneys, and communicated to the courtroom by means of closed-circuit television, if the court makes all of the following findings:

1 (1) The minor's testimony will involve a recitation of
2 the facts of an alleged sexual offense committed on or
3 with the minor.

4 (2) The impact on the minor of one or more of the
5 factors enumerated in subparagraphs (A) to (D),
6 inclusive, is shown by clear and convincing evidence to
7 be so substantial as to make the minor unavailable as a
8 witness unless closed-circuit television is used.

9 (A) Threats of serious bodily injury to be inflicted on
10 the minor or a family member, of incarceration or
11 deportation of the minor or a family member, or of
12 removal of the minor from the family or dissolution of the
13 family, in order to prevent or dissuade the minor from
14 attending or giving testimony at any trial or court
15 proceeding, or to prevent the minor from reporting the
16 alleged sexual offense or from assisting in criminal
17 prosecution.

18 (B) Use of a firearm or any other deadly weapon
19 during the commission of the crime.

20 (C) Infliction of great bodily injury upon the victim
21 during the commission of the crime.

22 (D) Conduct on the part of the defendant or defense
23 counsel during the hearing or trial ~~which~~ *that* causes the
24 minor to be unable to continue his or her testimony.

25 In making the determination required by this section,
26 the court shall consider the age of the minor, the
27 relationship between the minor and the defendant or
28 defendants, any handicap or disability of the minor, and
29 the nature of the acts charged. The minor's refusal to
30 testify shall not alone constitute sufficient evidence that
31 the special procedure described in this section is
32 necessary ~~in order~~ to obtain the minor's testimony.

33 (3) The equipment available for use of closed-circuit
34 television would accurately communicate the image and
35 demeanor of the minor to the judge, jury, defendant or
36 defendants, and attorneys.

37 (c) If the court orders the use of closed-circuit
38 television, two-way closed-circuit television shall be used,
39 except that if the impact on the minor of one or more of
40 the factors enumerated in subparagraphs (A) to (D),

1 inclusive, of paragraph (2) of subdivision (b), is shown by
2 clear and convincing evidence to be so substantial as to
3 make the minor unavailable as a witness even if two-way
4 closed-circuit television is used, one-way closed-circuit
5 television may be used. The prosecution shall give the
6 defendant or defendants at least 30 days' written notice
7 of the prosecution's intent to seek the use of one-way
8 closed-circuit television, unless good cause is shown to the
9 court why this 30-day notice requirement should not
10 apply.

11 (d) (1) The hearing on a motion brought pursuant to
12 this section shall be conducted out of the presence of the
13 jury.

14 (2) Notwithstanding Section 804 of the Evidence Code
15 or any other law, the court, in determining the merits of
16 the motion, shall not compel the minor to testify at the
17 hearing; nor shall the court deny the motion on the
18 ground that the minor has not testified.

19 (3) In determining whether the impact on an
20 individual child of one or more of the four factors
21 enumerated in paragraph (2) of subdivision (b) is so
22 substantial that the minor is unavailable as a witness
23 unless two-way or one-way closed-circuit television is
24 used, the court may question the minor in chambers, or
25 at some other comfortable place other than the
26 courtroom, on the record for a reasonable period of time
27 with the support person, the prosecutor, and defense
28 counsel present. The defendant or defendants shall not be
29 present. The court shall conduct the questioning of the
30 minor and shall not permit the prosecutor or defense
31 counsel to examine the minor. The prosecutor and
32 defense counsel shall be permitted to submit proposed
33 questions to the court prior to the session in chambers.
34 Defense counsel shall be afforded a reasonable
35 opportunity to consult with the defendant or defendants
36 prior to the conclusion of the session in chambers.

37 (e) When the court orders the testimony of a minor to
38 be taken in another place outside of the courtroom, the
39 court shall do all of the following:

1 (1) Make a brief statement on the record, outside of
2 the presence of the jury, of the reasons in support of its
3 order. While the statement need not include traditional
4 findings of fact, the reasons shall be set forth with
5 sufficient specificity to permit meaningful review and to
6 demonstrate that discretion was exercised in a careful,
7 reasonable, and equitable manner.

8 (2) Instruct the members of the jury that they are to
9 draw no inferences from the use of closed-circuit
10 television as a means of facilitating the testimony of the
11 minor.

12 (3) Instruct respective counsel, outside of the
13 presence of the jury, that they are to make no comment
14 during the course of the trial on the use of closed-circuit
15 television procedures.

16 (4) Instruct the support witness, outside of the
17 presence of the jury, that he or she is not to coach, cue,
18 or in any way influence or attempt to influence the
19 testimony of the minor.

20 (5) Order that a complete record of the examination
21 of the minor, including the images and voices of all
22 persons who in any way participate in the examination,
23 be made and preserved on videotape in addition to being
24 stenographically recorded. The videotape shall be
25 transmitted to the clerk of the court in which the action
26 is pending and shall be made available for viewing to the
27 prosecuting attorney, the defendant or defendants, and
28 his or her attorney during ordinary business hours. The
29 videotape shall be destroyed after five years have elapsed
30 from the date of entry of judgment. If an appeal is filed,
31 the tape shall not be destroyed until a final judgment on
32 appeal has been ordered. Any videotape ~~which~~ *that* is
33 taken pursuant to this section is subject to a protective
34 order of the court for the purpose of protecting the
35 privacy of the witness. This subdivision does not affect ~~the~~
36 ~~provisions of~~ subdivision (b) of Section 868.7.

37 (f) When the court orders the testimony of a minor to
38 be taken in another place outside the courtroom, only the
39 minor, a support person designated pursuant to Section
40 868.5, a nonuniformed bailiff, and, after consultation with

1 the prosecution and the defense, a representative
2 appointed by the court, shall be physically present for the
3 testimony. A videotape shall record the image of the
4 minor and his or her testimony, and a separate videotape
5 shall record the image of the support person.

6 (g) When the court orders the testimony of a minor to
7 be taken in another place outside the courtroom, the
8 minor shall be brought into the judge's chambers prior to
9 the taking of his or her testimony to meet for a reasonable
10 period of time with the judge, the prosecutor, and
11 defense counsel. A support person for the minor shall also
12 be present. This meeting shall be for the purpose of
13 explaining the court process to the child and to allow the
14 attorneys an opportunity to establish rapport with the
15 child to facilitate later questioning by closed-circuit
16 television. No participant shall discuss the defendant or
17 defendants or any of the facts of the case with the minor
18 during this meeting.

19 (h) When the court orders the testimony of a minor to
20 be taken in another place outside the courtroom, nothing
21 in this section ~~shall prohibit~~ *prohibits* the court from
22 ordering the minor to be brought into the courtroom for
23 a limited purpose, including the identification of the
24 defendant or defendants as the court deems necessary.

25 (i) The examination shall be under oath, and the
26 defendant or defendants shall be able to see and hear the
27 minor witness, and if two-way closed-circuit television is
28 used, the defendant's image shall be transmitted live to
29 the witness.

30 (j) Nothing in this section ~~shall affect~~ *affects* the
31 disqualification of witnesses pursuant to Section 701 of the
32 Evidence Code.

33 (k) The cost of examination by contemporaneous
34 closed-circuit television ordered pursuant to this section
35 shall be borne by the court out of its existing budget.

36 (l) This section shall become operative on January 1,
37 2001.

38 SEC. 155. Section 3003 of the Penal Code is amended
39 to read:

1 3003. (a) Except as otherwise provided in this
2 section, an inmate who is released on parole shall be
3 returned to the county that was the last legal residence
4 of the inmate prior to his or her incarceration.

5 For purposes of this subdivision, “last legal residence”
6 shall not be construed to mean the county wherein the
7 inmate committed an offense while confined in a state
8 prison or local jail facility or while confined for treatment
9 in a state hospital.

10 (b) Notwithstanding subdivision (a), an inmate may
11 be returned to another county if that would be in the best
12 interests of the public. If the Board of Prison Terms
13 setting the conditions of parole for inmates sentenced
14 pursuant to subdivision (b) of Section 1168, or the
15 Department of Corrections setting the conditions of
16 parole for inmates sentenced pursuant to Section 1170,
17 decides on a return to another county, it shall place its
18 reasons in writing in the parolee’s permanent record and
19 include these reasons in the notice to the sheriff or chief
20 of police pursuant to Section 3058.6. In making its
21 decision, the paroling authority shall consider, among
22 others, the following factors, giving the greatest weight to
23 the protection of the victim and the safety of the
24 community:

25 (1) The need to protect the life or safety of a victim,
26 the parolee, a witness, or any other person.

27 (2) Public concern that would reduce the chance that
28 the inmate’s parole would be successfully completed.

29 (3) The verified existence of a work offer, or an
30 educational or vocational training program.

31 (4) The existence of family in another county with
32 whom the inmate has maintained strong ties and whose
33 support would increase the chance that the inmate’s
34 parole would be successfully completed.

35 (5) The lack of necessary outpatient treatment
36 programs for parolees receiving treatment pursuant to
37 Section 2960.

38 (c) The Department of Corrections, in determining
39 an out-of-county commitment, shall give priority to the
40 safety of the community and any witnesses and victims.

(d) In making its decision about an inmate who participated in a joint venture program pursuant to Article 1.5 (commencing with Section 2717.1) of Chapter 5, the paroling authority shall give serious consideration to releasing him or her to the county where the joint venture program employer is located if that employer states to the paroling authority that he or she intends to employ the inmate upon release.

(e) (1) The following information, if available, shall be released by the Department of Corrections to local law enforcement agencies regarding a paroled inmate who is released in their jurisdictions:

(A) Last, first, and middle name.

(B) Birth date.

(C) Sex, race, height, weight, and hair and eye color.

(D) Date of parole and discharge.

(E) Registration status, if the inmate is required to register as a result of a controlled substance, sex, or arson offense.

(F) California Criminal Information Number, FBI number, social security number, and driver's license number.

(G) County of commitment.

(H) A description of scars, marks, and tattoos on the inmate.

(I) Offense or offenses for which the inmate was convicted that resulted in parole in this instance.

(J) Address, including all of the following information:

(i) Street name and number. Post office box numbers are not acceptable for purposes of this subparagraph.

(ii) City and ZIP Code.

(iii) Date that the address provided pursuant to this subparagraph was proposed to be effective.

(K) Contact officer and unit, including all of the following information:

(i) Name and telephone number of each contact officer.

(ii) Contact unit type of each contact officer, such as units responsible for parole, registration, or county probation.

1 (L) A digitized image of the photograph and at least
2 a ~~single-digit~~ *single-digit* fingerprint of the parolee.

3 (M) A geographic coordinate for the parolee's
4 residence location for use with a Geographical
5 Information System (GIS) or comparable computer
6 program.

7 (2) The information required by this subdivision shall
8 come from the statewide parolee data base. The
9 information obtained from each source shall be based on
10 the same timeframe.

11 (3) All of the information required by this subdivision
12 shall be provided utilizing a computer-to-computer
13 transfer in a format usable by a desktop computer system.
14 The transfer of this information shall be continually
15 available to local law enforcement agencies upon request.

16 (4) The unauthorized release or receipt of the
17 information described in this subdivision is a violation of
18 Section 11143.

19 (f) Notwithstanding any other provision of law, an
20 inmate who is released on parole shall not be returned to
21 a location within 35 miles of the actual residence of a
22 victim of, or a witness to, a violent felony as defined in
23 paragraphs (1) to (7), inclusive, of subdivision (c) of
24 Section 667.5 or a felony in which the defendant inflicts
25 great bodily injury on any person other than an
26 accomplice that has been charged and proved as
27 provided for in Section 12022.53, 12022.7, or 12022.9, if the
28 victim or witness has requested additional distance in the
29 placement of the inmate on parole, and if the Board of
30 Prison Terms or the Department of Corrections finds that
31 there is a need to protect the life, safety, or well-being of
32 a victim or witness.

33 (g) Notwithstanding any other law, an inmate who is
34 released on parole for any violation of Section 288 or 288.5
35 shall not be placed within one-quarter mile of any school
36 ~~including that includes~~ any or all of grades kindergarten
37 to 6, inclusive.

38 (h) The authority shall give consideration to the
39 equitable distribution of parolees and the proportion of
40 out-of-county commitments from a county compared to

1 the number of commitments from that county when
2 making parole decisions.

3 (i) An inmate may be paroled to another state
4 pursuant to any other law.

5 (j) (1) Except as provided in paragraph (2), the
6 Department of Corrections shall be the agency primarily
7 responsible for, and shall have control over, the program,
8 resources, and staff implementing the Law Enforcement
9 Automated Data System (LEADS) in conformance with
10 subdivision (e).

11 (2) Notwithstanding paragraph (1), the Department
12 of Justice shall be the agency primarily responsible for the
13 proper release of information under LEADS that relates
14 to fingerprint cards.

15 SEC. 156. Section 4536.5 of the Penal Code is
16 amended to read:

17 4536.5. The medical director or person in charge of a
18 state hospital or other public or private mental health
19 facility to which a person has been committed under the
20 provisions of Article 4 (commencing with Section 6600)
21 of Chapter 2 of Part 2 of the Welfare and Institutions
22 Code, shall promptly notify the Department of
23 ~~Corrections~~ *Corrections*, Sexually Violent Predator
24 Parole Coordinator, the chief of police of the city in which
25 the hospital or facility is located, or the sheriff of the
26 county if the hospital or facility is located in an
27 unincorporated area, of the escape of the person, and
28 shall request the assistance of the chief of police or sheriff
29 in apprehending the person, and shall, within 48 hours of
30 the escape of the person, orally notify the court that made
31 the commitment, the prosecutor in the case, and the
32 Department of Justice of the escape.

33 SEC. 157. Section 5066 of the Penal Code is amended
34 to read:

35 5066. The Director of Corrections shall expand the
36 existing prison ombudsman program to ensure the
37 comprehensive deployment of ombudsmen throughout
38 the state prison system with specific focus on the
39 maximum security institutions. The director shall submit
40 a report to the chairs of the appropriate fiscal and policy

1 committees—~~on~~ of the Legislature by February 1, 1999,
2 outlining the plans for implementation of this section.

3 SEC. 158. Section 6051 of the Penal Code is amended
4 to read:

5 6051. The Inspector General shall conduct a
6 management review audit of any warden in the
7 Department of Corrections or superintendent in the
8 Department of the Youth Authority who has held his or
9 her position for more than four years. The management
10 review audit shall include, but not be limited to, issues
11 relating to personnel, training, investigations, and
12 financial matters. The audit report shall be submitted to
13 the secretary of the agency; and the respective director
14 for evaluation and for any response deemed necessary.
15 Any Member of the Legislature may request and shall be
16 provided with a copy of any audit report. A report that
17 involves potential criminal investigations or prosecution
18 shall be considered confidential.

19 SEC. 159. Section 6065 of the Penal Code is amended
20 to read:

21 6065. (a) The Legislature finds and declares that
22 investigations of the Department of Corrections and the
23 Department of the Youth Authority that are conducted
24 by their respective offices of internal affairs, or any
25 successor to these offices, require appropriately trained
26 personnel, who perform their duties with honesty,
27 credibility, and without any conflicts of interest.

28 (b) To meet the objectives stated in subdivision (a),
29 the following conditions shall be met:

30 (1) Prior to training any peace officer who is selected
31 to conduct internal affairs investigations, the department
32 shall conduct a complete and thorough background
33 check. This background check shall be in addition to the
34 original background screening that was conducted when
35 the person was hired as a peace officer. Each person shall
36 satisfactorily pass the second background check. ~~No~~ Any
37 person who has been the subject of a sustained, serious
38 disciplinary action, including, but not limited to,
39 termination, suspension, or demotion, shall *not* pass the
40 background check.

1 (2) All internal affairs allegations or complaints,
2 whether investigated or not, shall be logged and
3 numbered ~~numerically~~ *sequentially* on an annual basis.
4 The log shall specify, but not be limited to, the following
5 information: the ~~numerical~~ *sequential* number of the
6 allegation or complaint; the date of receipt of the
7 allegation or complaint; the location or facility to which
8 the allegation or complaint pertains; and the disposition
9 of all actions taken, including any final action taken. The
10 log shall be made available to the Inspector General.

11 (c) Consistent with the objectives expressed in
12 subdivision (a), investigators shall conduct investigations
13 and inquiries in a manner that provides a complete and
14 thorough presentation of the facts regarding the
15 allegation or complaint. All extenuating and mitigating
16 facts shall be explored and reported. The role of the
17 investigator is that of a ~~fact-finder~~ *factfinder*. All reports
18 prepared by an investigator shall provide the appointing
19 authority with a complete recitation of the facts, and shall
20 refrain from conjecture or opinion.

21 (1) Uncorroborated or anonymous allegations shall
22 not constitute the sole basis for disciplinary action by the
23 department, other than an investigation.

24 (2) All reports shall be submitted in a standard format,
25 begin with a statement of the allegation or complaint,
26 provide all relevant facts, and include the investigator's
27 signature, certifying that the investigator has complied
28 with the provisions of this section subject to compliance
29 with Sections 118.1 and 148.6 ~~of the Penal Code~~.

30 SEC. 160. Section 6126 of the Penal Code is amended
31 to read:

32 6126. (a) *The* Inspector General shall be responsible
33 for reviewing departmental policy and procedures for
34 conducting investigations and audits of investigatory
35 practices and other audits and investigations of the
36 Department of Corrections, the Department of the
37 Youth Authority, the Board of Prison Terms, the Youthful
38 Offender Parole Board, or the Board of Corrections, as
39 requested by either the Secretary of the Youth and Adult
40 Correctional Agency or a Member of the Legislature,

1 pursuant to the approval of the Inspector General under
2 policies to be developed by the Inspector General.

3 (b) Upon completion of an investigation or audit, the
4 Inspector General shall provide a response to the
5 requester.

6 (c) In the accomplishment of investigatory audits, the
7 Inspector General shall also identify areas of full and
8 partial compliance, and noncompliance, with
9 departmental investigatory policies and procedures,
10 specify deficiencies in the completion and
11 documentation of investigatory processes, and
12 recommend corrective actions, including, but not limited
13 to, additional training with respect to investigative
14 policies.

15 SEC. 161. Section 12071 of the Penal Code is amended
16 to read:

17 12071. (a) (1) As used in this chapter, the term
18 “licensee,” “person licensed pursuant to Section 12071,”
19 or “dealer” means a person who has all of the following:

20 (A) A valid federal firearms license.

21 (B) Any regulatory or business license, or licenses,
22 required by local government.

23 (C) A valid seller’s permit issued by the State Board of
24 Equalization.

25 (D) A certificate of eligibility issued by the
26 Department of Justice pursuant to paragraph (4).

27 (E) A license issued in the format prescribed by
28 paragraph (6).

29 (F) Is among those recorded in the centralized list
30 specified in subdivision (e).

31 (2) The duly constituted licensing authority of a city,
32 county, or a city and county shall accept applications for,
33 and may grant licenses permitting, licensees to sell
34 firearms at retail within the city, county, or city and
35 county. The duly constituted licensing authority shall
36 inform applicants who are denied licenses of the reasons
37 for the denial in writing.

38 (3) No license shall be granted to any applicant who
39 fails to provide a copy of his or her valid federal firearms
40 license, valid seller’s permit issued by the State Board of

1 Equalization, and the certificate of eligibility described in
2 paragraph (4).

3 (4) A person may request a certificate of eligibility
4 from the Department of Justice, and the Department of
5 Justice shall issue a certificate to an applicant if the
6 department's records indicate that the applicant is not a
7 person who is prohibited from possessing firearms.

8 (5) The department shall adopt regulations to
9 administer the certificate of eligibility program and shall
10 recover the full costs of administering the program by
11 imposing fees assessed to applicants who apply for those
12 certificates.

13 (6) A license granted by the duly constituted licensing
14 authority of any city, county, or city and county, shall be
15 valid for not more than one year from the date of issuance
16 and shall be in one of the following forms:

17 (A) In the form prescribed by the Attorney General.

18 (B) A regulatory or business license that states on its
19 face "Valid for Retail Sales of Firearms" and is endorsed
20 by the signature of the issuing authority.

21 (C) A letter from the duly constituted licensing
22 authority having primary jurisdiction for the applicant's
23 intended business location stating that the jurisdiction
24 does not require any form of regulatory or business
25 license or does not otherwise restrict or regulate the sale
26 of firearms.

27 (7) Local licensing authorities may assess fees to
28 recover their full costs of processing applications for
29 licenses.

30 (b) A license is subject to forfeiture for a breach of any
31 of the following prohibitions and requirements:

32 (1) (A) Except as provided in subparagraphs (B) and
33 (C), the business shall be conducted only in the buildings
34 designated in the license.

35 (B) A person licensed pursuant to subdivision (a) may
36 take possession of firearms and commence preparation of
37 registers for the sale, delivery, or transfer of firearms at
38 gun shows or events, as defined in Section 178.100 of Title
39 27 of the Code of Federal Regulations, or its successor, if
40 the gun show or event is not conducted from any

1 motorized or towed vehicle. A person conducting
2 business pursuant to this subparagraph shall be entitled
3 to conduct business as authorized herein at any gun show
4 or event in the state without regard to the jurisdiction
5 within this state that issued the license pursuant to
6 subdivision (a), provided *that* the person complies with
7 (i) all applicable laws, including, but not limited to, the
8 waiting period specified in subparagraph (A) of
9 paragraph (3), and (ii) all applicable local laws,
10 regulations, and fees, if any.

11 A person conducting business pursuant to this
12 subparagraph shall publicly display his or her license
13 issued pursuant to subdivision (a), or a facsimile thereof,
14 at any gun show or event, as specified in this
15 subparagraph.

16 (C) A person licensed pursuant to subdivision (a) may
17 engage in the sale and transfer of firearms other than
18 pistols, revolvers, or other firearms capable of being
19 concealed upon the person, at events specified in
20 subdivision (g) of Section 12078, subject to the
21 prohibitions and restrictions contained in that
22 subdivision.

23 A person licensed pursuant to subdivision (a) also may
24 accept delivery of firearms other than pistols, revolvers,
25 or other firearms capable of being concealed upon the
26 person, outside the building designated in the license,
27 provided *that* the firearm is being donated for the
28 purpose of sale or transfer at an auction or similar event
29 specified in subdivision (g) of Section 12078.

30 (D) The firearm may be delivered to the purchaser,
31 transferee, or person being loaned the firearm at one of
32 the following places:

33 (i) The building designated in the license.

34 (ii) The places specified in subparagraph (B) or (C).

35 (iii) The place of residence of, the fixed place of
36 business of, or on private property owned or lawfully
37 possessed by, the purchaser, transferee, or person being
38 loaned the firearm.

(2) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises where it can easily be seen.

(3) No firearm shall be delivered:

(A) Within 10 days of the application to purchase, or after notice by the department pursuant to subdivision (d) of Section 12076, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the department of any fee required pursuant to subdivision (e) of Section 12076, whichever is later.

(B) Unless unloaded and securely wrapped or unloaded and in a locked container.

(C) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of his or her identity and age to the dealer.

(D) Whenever the dealer is notified by the Department of Justice that the person is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(4) No pistol, revolver, or other firearm or imitation thereof capable of being concealed upon the person, or placard advertising the sale or other transfer thereof, shall be displayed in any part of the premises where it can readily be seen from the outside.

(5) The licensee shall agree to, and shall act properly and promptly in, processing firearms transactions pursuant to Section 12082.

(6) The licensee shall comply with Sections 12073, 12076, and 12077, subdivisions (a) and (b) of Section 12072, and subdivision (a) of Section 12316.

(7) The licensee shall post conspicuously within the licensed premises the following warnings in block letters not less than one inch in height:

(A) "IF YOU LEAVE A LOADED FIREARM WHERE A CHILD OBTAINS AND IMPROPERLY USES IT, YOU MAY BE FINED OR SENT TO PRISON."

(B) "IF YOU KEEP A LOADED FIREARM, OR A PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE

1 PERSON, WITHIN ANY PREMISES UNDER YOUR
2 CUSTODY OR CONTROL, AND A PERSON UNDER—46
3 *THE AGE OF 16 YEARS* GAINS ACCESS TO THE
4 FIREARM, YOU MAY BE GUILTY OF A
5 MISDEMEANOR OR A FELONY, UNLESS YOU
6 STORED THE FIREARM IN A LOCKED CONTAINER,
7 OR LOCKED THE FIREARM WITH A LOCKING
8 DEVICE, TO KEEP IT FROM TEMPORARILY
9 FUNCTIONING.”

10 (C) “DISCHARGING FIREARMS IN POORLY
11 VENTILATED AREAS, CLEANING FIREARMS, OR
12 HANDLING AMMUNITION MAY RESULT IN
13 EXPOSURE TO LEAD, A SUBSTANCE KNOWN TO
14 CAUSE BIRTH DEFECTS, REPRODUCTIVE HARM,
15 AND OTHER SERIOUS PHYSICAL INJURY. HAVE
16 ADEQUATE VENTILATION AT ALL TIMES. WASH
17 HANDS THOROUGHLY AFTER EXPOSURE.”

18 (D) “FEDERAL REGULATIONS PROVIDE THAT
19 IF YOU DO NOT TAKE PHYSICAL POSSESSION OF
20 THE FIREARM THAT YOU ARE ACQUIRING
21 OWNERSHIP OF WITHIN 30 DAYS AFTER YOU
22 COMPLETE THE INITIAL BACKGROUND CHECK
23 PAPERWORK, THEN YOU HAVE TO GO THROUGH
24 THE BACKGROUND CHECK PROCESS A SECOND
25 TIME IN ORDER TO TAKE PHYSICAL POSSESSION
26 OF THAT FIREARM.”

27 (8) ~~Commencing April 1, 1994, no~~ No pistol, revolver,
28 or other firearm capable of being concealed upon the
29 person shall be delivered unless the purchaser,
30 transferee, or person being loaned the firearm presents
31 to the dealer a basic firearms safety certificate.

32 (9) ~~Commencing July 1, 1992, the~~ The licensee shall
33 offer to provide the purchaser or transferee of a firearm,
34 or person being loaned a firearm, with a copy of the
35 pamphlet described in Section 12080 and may add the
36 cost of the pamphlet, if any, to the sales price of the
37 firearm.

38 (10) The licensee shall not commit an act of collusion
39 as defined in Section 12072.

(11) The licensee shall post conspicuously within the licensed premises a detailed list of each of the following:

(A) All charges required by governmental agencies for processing firearm transfers required by Sections 12076, 12082, and 12806.

(B) All fees that the licensee charges pursuant to Sections 12082 and 12806.

(12) The licensee shall not misstate the amount of fees charged by a governmental agency pursuant to Sections 12076, 12082, and 12806.

(13) The licensee shall report the loss or theft of any firearm that is merchandise of the licensee, any firearm that the licensee takes possession of pursuant to Section 12082, or any firearm kept at the licensee's place of business within 48 hours of discovery to the appropriate law enforcement agency in the city, county, or city and county where the licensee's business premises are located.

(14) In a city and county, or in the unincorporated area of a county with a population of 200,000 persons or more according to the most recent federal decennial census or within a city with a population of 50,000 persons or more according to the most recent federal decennial census, ~~any time~~ *anytime* the licensee is not open for business, the licensee shall store all firearms kept in his or her licensed place of business, using one of the following methods as to each particular firearm:

(A) Store the firearm in a secure facility that is a part of, or that constitutes, the licensee's business premises.

(B) Secure the firearm with a hardened steel rod or cable of at least one-eighth inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has a shackle. The lock and shackle shall be protected or shielded from the use of a bolt cutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises.

(C) Store the firearm in a locked fireproof safe or vault in the licensee's business premises.

(15) The licensing authority in an unincorporated area of a county with a population of less than 200,000 persons according to the most recent federal decennial census, or within a city with a population of less than 50,000 persons according to the most recent federal decennial census, may impose the requirements specified in paragraph (14).

(16) ~~Commencing January 1, 1994, the~~ The licensee shall, upon the issuance or renewal of a license, submit a copy of the ~~same~~ license to the Department of Justice.

(17) The licensee shall maintain and make available a *firearms transaction record* for inspection during business hours to any peace officer, authorized local law enforcement employee, or Department of Justice employee designated by the Attorney General, upon the presentation of proper identification, ~~— a —~~ *firearms transaction record*.

(18) (A) On the date of receipt, the licensee shall report to the Department of Justice, in a format prescribed by the department, the acquisition by the licensee of the ownership of a pistol, revolver, or other firearm capable of being concealed upon the person.

(B) ~~The provisions of this~~ This paragraph ~~shall~~ does not apply to any of the following transactions:

(i) A transaction subject to the provisions of subdivision (n) of Section 12078.

(ii) The dealer acquired the firearm from a wholesaler.

(iii) The dealer is also licensed as a secondhand dealer pursuant to Article 4 (commencing with Section 21625) of Chapter 9 of Division 8 of the Business and Professions Code.

(iv) The dealer acquired the firearm from a person who is licensed as a manufacturer or importer to engage in those activities pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and any regulations issued pursuant thereto.

(v) The dealer acquired the firearm from a person who resides outside this state who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of

1 the United States Code and any regulations issued
2 pursuant thereto.

3 (19) The licensee shall forward, in a format prescribed
4 by the Department of Justice, information as required by
5 the department on any firearm that is not delivered
6 within the time period set forth in Section 178.102 (c) of
7 Title 27 of the Code of Federal Regulations.

8 (c) (1) As used in this article, “clear evidence of his or
9 her identity and age” means either of the following:

10 (A) A valid California driver’s license.

11 (B) A valid California identification card issued by the
12 Department of Motor Vehicles.

13 (2) As used in this article, a “basic firearms safety
14 certificate” means a basic firearms certificate issued to
15 the purchaser, transferee, or person being loaned the
16 firearm by the Department of Justice pursuant to Article
17 8 (commencing with Section 12800) of Chapter 6.

18 (3) As used in this section, a “secure facility” means a
19 building that meets all of the following specifications:

20 (A) All perimeter doorways ~~shall meet~~ are one of the
21 following:

22 (i) A windowless steel security door equipped with
23 both a dead bolt and a doorknob lock.

24 (ii) A windowed metal door that is equipped with both
25 a dead bolt and a doorknob lock. If the window has an
26 opening of five inches or more measured in any direction,
27 the window shall be covered with steel bars ~~of~~ at least
28 one-half inch *in* diameter or metal grating of at least nine
29 gauge affixed to the exterior or interior of the door.

30 (iii) A metal grate that is padlocked and affixed to the
31 licensee’s premises independent of the door and
32 doorframe.

33 (B) All windows are covered with steel bars.

34 (C) Heating, ventilating, air-conditioning, and service
35 openings are secured with steel bars, metal grating, or an
36 alarm system.

37 (D) Any metal grates have spaces no larger than six
38 inches wide measured in any direction.

39 (E) Any metal screens have spaces no larger than
40 three inches wide measured in any direction.

1 (F) All steel bars ~~shall be~~ *are* no further than six inches
2 apart.

3 (4) As used in this section, “licensed premises,”
4 “licensed place of business,” “licensee’s place of
5 business,” or “licensee’s business premises” means the
6 building designated in the license.

7 (5) For purposes of paragraph (17) of subdivision (b):

8 (A) A “firearms transaction record” is a record
9 containing the same information referred to in
10 subdivision (a) of Section 178.124, Section 178.124a, and
11 subdivision (e) of Section 178.125 of Title 27 of the Code
12 of Federal Regulations.

13 (B) A licensee shall be in compliance with ~~the~~
14 ~~provisions of~~ paragraph (17) of subdivision (b) if he or she
15 maintains and makes available for inspection during
16 business hours to any peace officer, authorized local law
17 enforcement employee, or Department of Justice
18 employee designated by the Attorney General, upon the
19 presentation of proper identification, the bound book
20 containing the same information referred to in ~~Section~~
21 ~~178.124a~~ *subdivision (a) of Section 178.124* and
22 subdivision (e) of Section 178.125 of Title 27 of the Code
23 of Federal Regulations and the records referred to in
24 subdivision (a) of Section 178.124 of Title 27 of the Code
25 of Federal Regulations.

26 (d) Upon written request from a licensee, the
27 licensing authority may grant an exemption from
28 compliance with the requirements of paragraph (14) of
29 subdivision (b) if the licensee is unable to comply with
30 those requirements because of local ordinances,
31 covenants, lease conditions, or similar circumstances not
32 under the control of the licensee.

33 (e) Except as otherwise provided in this subdivision,
34 the Department of Justice shall keep a centralized list of
35 all persons licensed pursuant to subparagraphs (A) to
36 (E), inclusive, of paragraph (1) of subdivision (a). The
37 department may remove from this list any person who
38 knowingly or with gross negligence violates this article.
39 Upon removal of a dealer from this list, notification shall
40 be provided to local law enforcement and licensing

1 authorities in the jurisdiction where the dealer's business
2 is located. The department shall make information about
3 an individual dealer available, upon request, for one of
4 the following purposes only:

5 (1) For law enforcement purposes.

6 (2) When the information is requested by a person
7 licensed pursuant to Chapter 44 (commencing with
8 Section 921) of Title 18 of the United States Code for
9 determining the validity of the license for firearm
10 shipments.

11 (3) When information is requested by a person
12 promoting, sponsoring, operating, or otherwise
13 organizing a show or event as defined in Section 178.100
14 of Title 27 of the Code of Federal Regulations, or its
15 successor, who possesses a valid certificate of eligibility
16 issued pursuant to Section 12071.1, if that information is
17 requested by the person to determine the eligibility of a
18 prospective participant in a gun show or event to conduct
19 transactions as a firearms dealer pursuant to
20 subparagraph (B) of paragraph (1) of subdivision (b).
21 Information provided pursuant to this paragraph shall be
22 limited to information necessary to corroborate an
23 individual's current license status.

24 (f) The Department of Justice may inspect dealers to
25 ensure compliance with this article. The department may
26 assess an annual fee, not to exceed eighty-five dollars
27 (\$85), to cover the reasonable cost of maintaining the list
28 described in subdivision (e), including the cost of
29 inspections. Dealers whose place of business is in a
30 jurisdiction that has adopted an inspection program to
31 ensure compliance with firearms law shall be exempt
32 from that portion of the department's fee that relates to
33 the cost of inspections. The applicant is responsible for
34 providing evidence to the department that the
35 jurisdiction in which the business is located has the
36 inspection program.

37 (g) The Department of Justice shall maintain and
38 make available upon request information concerning the
39 number of inspections conducted and the amount of fees
40 collected pursuant to subdivision (f), a listing of

1 exempted jurisdictions, as defined in subdivision (f), the
2 number of dealers removed from the centralized list
3 defined in subdivision (e), and the number of dealers
4 found to have violated this article with knowledge or
5 gross negligence.

6 (h) Paragraph (14) or (15) of subdivision (b) ~~shall~~
7 *does* not apply to a licensee organized as a nonprofit
8 public benefit or mutual benefit corporation organized
9 pursuant to Part 2 (commencing with Section 5110) or
10 Part 3 (commencing with Section 7110) of Division 2 of
11 the Corporations Code, if both of the following conditions
12 are satisfied:

13 (1) The nonprofit public benefit or mutual benefit
14 corporation obtained the dealer's license solely and
15 exclusively to assist that corporation or local chapters of
16 that corporation in conducting auctions or similar events
17 at which firearms are auctioned off to fund the activities
18 of that corporation or the local chapters of the
19 corporation.

20 (2) The firearms are not pistols, revolvers, or other
21 firearms capable of being concealed upon the person.

22 SEC. 162. Section 12085 of the Penal Code is amended
23 to read:

24 12085. (a) Commencing July 1, 1999, no person, firm,
25 or corporation licensed to manufacture firearms pursuant
26 to Chapter 44 (commencing with Section 921) of Title 18
27 of the United States Code may manufacture firearms
28 within this state unless licensed pursuant to Section 12086.

29 (b) Subdivision (a) ~~shall~~ *does* not apply to a person
30 licensed to manufacture firearms pursuant to Chapter 44
31 (commencing with Section 921) of Title 18 of the United
32 States Code who manufactures fewer than ~~one hundred~~
33 *100* firearms in a calendar year within this state.

34 (c) If a person, firm, or corporation required to be
35 licensed pursuant to Section 12086 ceases operations, then
36 the records required pursuant to paragraphs (6) and (10)
37 of subdivision (c) of Section 12086 shall be forwarded to
38 the ~~Federal~~ *federal* Bureau of Alcohol, Tobacco, and
39 Firearms within three days of the closure of business.

40 (d) A violation of this section is a misdemeanor.

(e) (1) As used in this section and Section 12086, the term “firearm” includes the frame or receiver of the weapon.

(2) As used in this section and Section 12086, the term “firearm” includes the unfinished frame or receiver of a weapon that can be readily converted to the functional condition of a finished frame or receiver.

(3) For purposes of this section and Section 12086, the term “firearm” does not include an unloaded firearm ~~which~~ *that* is defined as an “antique firearm” in paragraph (16) of subsection (a) of Section 921 of Title 18 of the United States Code.

SEC. 163. Section 12086 of the Penal Code is amended to read:

12086. (a) (1) As used in this section, ~~“licensee,”~~ *“licensee”* means a person, firm, or corporation that satisfies both of the following:

(A) Has a license issued pursuant to paragraph (2) of subdivision (b).

(B) Is among those recorded in the centralized list specified in subdivision (f).

(2) As used in this section, “department” means the Department of Justice.

(b) (1) The Department of Justice shall accept applications for, and shall grant licenses permitting, the manufacture of firearms within this state. The department shall inform applicants who are denied licenses of the reasons for the denial in writing.

(2) No license shall be granted by the department unless and until the applicant presents proof that he or she has all of the following:

(A) A valid license to manufacture firearms issued pursuant to Chapter 44 (commencing with Section ~~920~~ 921) of Title 18 of the United States Code.

(B) Any regulatory or business license, or licenses, required by local government.

(C) A valid seller’s permit or resale certificate issued by the State Board of Equalization, if applicable.

(D) A certificate of eligibility issued by the Department of Justice pursuant to paragraph (4) of subdivision (a) of Section 12071.

(3) The department shall adopt regulations to administer this section and Section 12085 and shall recover the full costs of administering the program by collecting fees from license applicants. Recoverable costs shall include, but not be limited to, the costs of inspections and maintaining a centralized list of licensed firearm manufacturers. The fee for licensed manufacturers who produce fewer than 500 firearms in a calendar year within this state shall not exceed two hundred fifty dollars (\$250) per year or the actual costs of inspections and maintaining a centralized list of firearm manufacturers and any other duties of the department required pursuant to this section and Section 12085, whichever is less.

(4) A license granted by the department shall be valid for no more than one year from the date of issuance and shall be in the form prescribed by the Attorney General.

(c) A licensee shall comply with the following prohibitions and requirements:

(1) The business shall be conducted only in the buildings designated in the license.

(2) The license or a copy thereof, certified by the department, shall be displayed on the premises where it can easily be seen.

(3) Whenever a licensee discovers *that* a firearm ~~to be~~ *has been* stolen or *is* missing from the licensee's premises, the licensee shall report the loss or theft within 48 hours of the discovery to all of the following:

(A) The Department of Justice, in a manner prescribed by the department.

(B) The *federal* Bureau of Alcohol, Tobacco, and Firearms.

(C) The police department in the city or city and county where the building designated in the license is located.

(D) If there is no police department in the city or city and county where the building designated in the license

1 is located, the sheriff of the county where the building
2 designated in the license is located.

3 (4) (A) The licensee shall require that each employee
4 obtain a certificate of eligibility pursuant to paragraph
5 (4) of subdivision (a) of Section 12071, which shall be
6 renewed annually, prior to being allowed to come into
7 contact with any firearm.

8 (B) The licensee shall prohibit any employee who the
9 licensee knows or reasonably should know is within a class
10 of persons prohibited from possessing firearms pursuant
11 to Section 12021 or 12021.1 of this code, or Section 8100 or
12 8103 of the Welfare and Institutions Code, from coming
13 into contact with any firearm.

14 (5) (A) Each firearm the licensee manufactures in
15 this state shall be identified with a unique serial number
16 stamped onto the firearm utilizing the method of
17 compression stamping.

18 (B) Licensed manufacturers who produce fewer than
19 500 firearms in a calendar year within this state may
20 serialize long guns only by utilizing a method of
21 compression stamping or by engraving the serial number
22 onto the firearm.

23 (C) The licensee shall stamp the serial number onto
24 the firearm within one business day of the time the
25 receiver or frame is manufactured.

26 (D) The licensee shall not use the same serial number
27 for more than one firearm.

28 (6) (A) The licensee shall record the type, model,
29 caliber, or gauge, and serial number of each firearm
30 manufactured or acquired, and the date of the
31 manufacture or acquisition, within one business day of
32 the manufacture or acquisition.

33 (B) The licensee shall maintain permanently within
34 the building designated in the license the records
35 required pursuant to subparagraph (A).

36 (C) Backup copies of the records described in
37 subparagraph (A), whether electronic or hard copy, shall
38 be made at least once a month. These backup records ~~are~~
39 ~~to~~ *shall* be maintained in a facility separate from the one
40 in which the primary records are stored.

1 (7) (A) The licensee shall allow the department to
2 inspect the building designated in the license to ensure
3 compliance with the requirements of this section.

4 (B) The licensee shall allow any peace officer,
5 authorized law enforcement employee, or Department
6 of Justice employee designated by the Attorney General,
7 upon the presentation of proper identification, to inspect
8 facilities and records during business hours to ensure
9 compliance with the requirements of this section.

10 (8) The licensee shall store in a secure facility all
11 firearms manufactured and all barrels for firearms
12 manufactured.

13 (9) (A) The licensee shall notify the chief of police or
14 other head of the municipal police department in the city
15 or city and county where the building designated in the
16 license is located that the licensee is manufacturing
17 firearms within that city or city and county and the
18 location of the licensed premises.

19 (B) If there is no police department in the city or city
20 and county where the building designated in the license
21 is located, the licensee shall notify the sheriff of the county
22 where the building designated in the license is located
23 that the licensee is manufacturing firearms within that
24 county and the location of the licensed premises.

25 (10) ~~The~~ *For at least 10 years, the* licensee shall
26 maintain records ~~as prescribed by the department~~ of all
27 firearms that are lost or stolen ~~and maintain the same for~~
28 ~~at least 10 years, as prescribed by the department.~~

29 (d) Except as otherwise provided in subdivision (e), as
30 used in this section, a “secure facility” means that the
31 facility satisfies all of the following:

32 (1) The facility is equipped with a burglar alarm with
33 central monitoring.

34 (2) All perimeter entries to areas in which firearms are
35 stored other than doors, including windows and skylights,
36 are secured with steel window guards or an audible,
37 silent, or sonic alarm to detect entry.

38 (3) All perimeter doorways are designed in one of the
39 following ways:

1 (A) A windowless steel security door equipped with
2 both a deadbolt and a doorknob lock.

3 (B) A windowed metal door equipped with both a
4 deadbolt and a doorknob lock. If the window has an
5 opening of five inches or more measured in any direction,
6 the window is covered with steel bars of at least one-half
7 inch diameter or metal grating of at least nine gauge
8 affixed to the exterior or interior of the door.

9 (C) A metal grate that is padlocked and affixed to the
10 licensee's premises independent of the door and
11 doorframe.

12 (D) Hinges and hasps attached to doors by welding,
13 riveting, or bolting with nuts on the inside of the door.

14 (E) Hinges and hasps installed so that they cannot be
15 removed when the doors are closed and locked.

16 (4) Heating, ventilating, air-conditioning, and service
17 openings are secured with steel bars, metal grating, or an
18 alarm system.

19 (5) No perimeter metal grates *are* capable of being
20 entered by any person.

21 (6) Steel bars used to satisfy the requirements of this
22 subdivision are not capable of being entered by any
23 person.

24 (7) Perimeter walls of rooms in which firearms are
25 stored are constructed of concrete or at least 10-gauge
26 expanded steel wire mesh utilized along with typical
27 wood frame and drywall construction. If firearms are not
28 stored in a vault, the facility shall use an exterior
29 security-type door along with a high security, single-key
30 deadbolt, or other door that is more secure. All firearms
31 shall be stored in a separate room away from any general
32 living area or work area. Any door to the storage facility
33 shall be locked while unattended.

34 (8) Perimeter doorways, including the loading dock
35 area, are locked at all times when not attended by paid
36 employees or contracted employees, including security
37 guards.

38 (9) Except when a firearm is currently being tested,
39 any ammunition on the premises is removed from all
40 manufactured guns and stored in a separate and locked

1 room, cabinet, or box away from the storage area for the
2 firearms. Ammunition may be stored with a weapon only
3 in a locked safe.

4 (e) For purposes of this section, any licensed
5 manufacturer who produces fewer than 500 firearms in
6 a calendar year within this state may maintain a “secure
7 facility” by complying with all of the requirements
8 described in subdivision (d), or may design a security
9 plan ~~which shall be~~ *that is* approved by the Department
10 of Justice or the ~~Federal~~ *federal* Bureau of Alcohol,
11 Tobacco, and Firearms.

12 (1) If a security plan is approved by the ~~Federal~~
13 *federal* Bureau of Alcohol, Tobacco, and Firearms, the
14 approved plan, along with proof of approval, shall be filed
15 with the Department of Justice and the local police
16 department. If there is no police department, the filing
17 shall be with the county sheriff’s office.

18 (2) If a security plan is approved by the Department
19 of Justice, the approved plan, along with proof of
20 approval, shall be filed with the local police department.
21 If there is no police department, the filing shall be with
22 the county sheriff’s office.

23 (f) (1) Except as otherwise provided in this
24 subdivision, the Department of Justice shall maintain a
25 centralized list of all persons licensed pursuant to
26 paragraph (2) of subdivision (b). The centralized list shall
27 be provided annually to each police department and
28 county sheriff within the state.

29 (2) Except as provided in paragraph (3), the license of
30 any licensee who violates this section may be revoked.

31 (3) The license of any licensee who knowingly or with
32 gross negligence violates this section or violates this
33 section three times shall be revoked, and that person,
34 firm, or corporation shall become permanently ineligible
35 to obtain a license pursuant to this section.

36 (g) (1) Upon the revocation of the license,
37 notification shall be provided to local law enforcement
38 authorities in the jurisdiction where the licensee’s
39 business is located and to the ~~Federal~~ *federal* Bureau of
40 Alcohol, Tobacco, and Firearms.

(2) The department shall make information concerning the location and name of a licensee available, upon request, for the following purposes only:

(A) Law enforcement.

(B) When the information is requested by a person licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code for determining the validity of the license for firearm shipments.

(3) Notwithstanding paragraph (2), the department shall make the name and business address of a licensee available to any person upon written request.

(h) The Department of Justice shall maintain and make available upon request information concerning the number of inspections conducted and the amount of fees collected pursuant to paragraph (3) of subdivision (b), the number of licensees removed from the centralized list described in subdivision (f), and the number of licensees found to have violated this section.

SEC. 164. Section 12370 of the Penal Code is amended to read:

12370. (a) Any person who has been convicted of a violent felony, as defined in subdivision (c) of Section 667.5, under the laws of the United States, the State of California, or any other state, government, or country, who purchases, owns, or possesses body armor, as defined by Section 942 of Title 11 of the California Code of Regulations, except as authorized under subdivision (b), is guilty of a felony, punishable by imprisonment in a state prison for 16 months, or two or three years.

(b) Any person whose employment, livelihood, or safety is dependent on the ability to legally possess and use body armor, who is subject to the prohibition imposed by subdivision (a) due to a prior violent felony conviction, may file a petition with the chief of police or county sheriff of the jurisdiction in which he or she seeks to possess and use the body armor for an exception to this prohibition. The chief of police or sheriff may reduce or eliminate the prohibition, impose conditions on reduction or elimination of the prohibition, or otherwise

1 grant relief from the prohibition as he or she deems
2 appropriate, based on the following:

3 (1) A finding that the petitioner is likely to use body
4 armor in a safe and lawful manner.

5 (2) A finding that the petitioner has a reasonable need
6 for ~~such~~ *this type of* protection under the circumstances.

7 In making its decision, the chief of police or sheriff shall
8 consider the petitioner's continued employment, the
9 interests of justice, any relevant evidence, and the totality
10 of the circumstances. It is the intent of the Legislature
11 that law enforcement officials exercise broad discretion
12 in fashioning appropriate relief under this paragraph in
13 cases in which relief is warranted. However, ~~nothing in~~
14 ~~this paragraph shall~~ *may not* be construed to require law
15 enforcement officials to grant relief to any particular
16 petitioner. Relief from this prohibition ~~shall~~ *does* not
17 relieve any other person or entity from any liability that
18 might otherwise be imposed.

19 (c) The chief of police or sheriff shall require, as a
20 condition of granting an exception under subdivision (b),
21 that the petitioner agree to maintain on his or her person
22 a certified copy of the law enforcement official's
23 permission to possess and use body armor, including any
24 conditions or limitations.

25 (d) Law enforcement officials who enforce the
26 prohibition specified in subdivision (a) against a person
27 who has been granted relief pursuant to subdivision (b),
28 shall be immune from any liability for false arrest arising
29 from the enforcement of this subdivision unless the
30 person has in his or her possession a certified copy of the
31 permission granting the person relief from the
32 prohibition, as required by subdivision (c). This
33 immunity from liability ~~shall~~ *does* not relieve any person
34 or entity from any other liability that might otherwise be
35 imposed.

36 (e) For purposes of this section only, "violent felony"
37 refers to the specific crimes listed in subdivision (c) of
38 Section 667.5, and to crimes defined under the applicable
39 laws of the United States or any other state, government,

1 or country that are reasonably equivalent to the crimes
2 listed in subdivision (c) of Section 667.5.

3 SEC. 165. Section 13515.55 of the Penal Code is
4 amended to read:

5 13515.55. Every city police officer or deputy sheriff at
6 a supervisory level who is assigned field or investigative
7 duties shall complete a high technology crimes and
8 computer seizure training course certified by the
9 Commission on Peace Officer Standards and Training by
10 January 1, 2000, or within 18 months of assignment to
11 supervisory duties. Completion of the course may be
12 satisfied by telecourse, video training tape, or other
13 instruction. This training shall be offered to all city police
14 officers and deputy sheriffs as part of continuing
15 professional training. The training shall, at a minimum,
16 address relevant laws, recognition of high technology
17 crimes, and computer evidence collection and
18 preservation.

19 SEC. 166. Section 13602 of the Penal Code is amended
20 to read:

21 13602. (a) The Department of Corrections shall use
22 the training academy at Galt. This academy shall be
23 known as the Richard A. McGee Academy. The
24 Department of the Youth Authority shall use the training
25 center at Stockton. The training divisions, in using the
26 funds, shall endeavor to minimize costs of administration
27 so that a maximum amount of the funds will be used for
28 providing training and support to correctional peace
29 officers while being trained by the departments.

30 (b) Each new cadet who attends an academy after July
31 1, 2000, shall complete the course of training, pursuant to
32 standards approved by CPOST before he or she may be
33 assigned to a post or job as a peace officer. After July 1,
34 2000, every newly appointed first-line or second-line
35 supervisor shall complete the course of training, pursuant
36 to standards approved by CPOST for that position. Every
37 effort shall be made to provide training prior to
38 commencement of supervisorial duties. If ~~such~~ *this*
39 training is not completed within six months of
40 appointment to that position, any first-line or second-line

1 supervisor shall not perform supervisory duties until the
2 training is completed. CPOST shall report to the
3 Governor and to the appropriate policy and fiscal
4 committees of the Legislature by September 1, 1999,
5 concerning the training standards determined for line
6 correctional peace officers and supervisors of the
7 ~~California~~ Department of Corrections and the ~~California~~
8 *Department of the Youth Authority*. This report shall
9 include, but not be limited to, a description of the
10 standards for the curriculum of the respective academies
11 and the length of time required to satisfactorily train
12 officers for their duties.

13 It is the intent of this section that the report be included
14 in the basis for a new budget change proposal for the
15 administration to consider in the 2000–01 Budget Act to
16 enhance department training operations.

17 SEC. 167. Section 10218 of the Public Resources Code
18 is amended to read:

19 10218. “Husbandry practices” means agricultural
20 activities, such as those specified in subdivision (e) of
21 Section ~~3482~~ 3482.5 of the Civil Code, conducted or
22 maintained for commercial purposes in a manner
23 consistent with proper and accepted customs and
24 standards, as established and followed by similar
25 agricultural operations in the same locality.

26 SEC. 168. Section 14575 of the Public Resources Code
27 is amended to read:

28 14575. (a) If any type of empty beverage container
29 with a refund value established pursuant to Section 14560
30 has a scrap value less than the sum of paragraphs (1) and
31 (2), the department shall establish a processing fee and
32 a processing payment for the container, by the type of the
33 material of the container, at least equal to the difference
34 between the scrap value offered by a statistically
35 significant sample of container manufacturers, beverage
36 manufacturers, processors, or willing purchasers, for each
37 container sold by the beverage manufacturer, and the
38 sum of both of the following:

39 (1) The actual cost for certified recycling centers,
40 excluding ~~those~~ recycling centers ~~receiving~~ *that receive*

1 a convenience incentive payment; and certified
2 processors ~~which~~ *that* did not receive convenience
3 incentive payments in the year in which the processing
4 fee is calculated or recalculated, of receiving, handling,
5 processing, storing, transporting, and maintaining
6 equipment for each container sold for recycling or, only
7 if the container is not recyclable, for disposal, calculated
8 pursuant to subdivision (c).

9 (2) A reasonable financial return for recycling centers
10 and processors, calculated pursuant to subdivision (b).

11 (b) On January 1, 1999, and annually thereafter, the
12 department shall calculate weighted statewide average
13 values for the amounts specified in paragraphs (1) and
14 (2) of subdivision (a) for each type of container material
15 sold and a new processing fee, which shall be effective on
16 that same date.

17 (c) A processing fee established pursuant to this
18 section shall be based upon all of the following:

19 (1) The average scrap values paid by willing
20 purchasers during the 1990 calendar year for the initial
21 calculation and the average scrap values paid by willing
22 purchasers during the calendar year directly preceding
23 the year in which the processing fee is calculated for any
24 subsequent calculation.

25 (2) The latest available data indicating the volumes of
26 beverage containers collected by certified processors and
27 recycling centers.

28 (3) The actual recycling costs for certified recycling
29 centers and processors, as determined pursuant to
30 paragraph (1) of subdivision (a) for the 1989 calendar
31 year for the initial calculation, and for the second
32 calendar year preceding the year in which the processing
33 fee is calculated for any subsequent calculation.

34 (d) Every six months, or more frequently as
35 determined to be necessary by the department, the
36 department may adjust a processing fee established
37 pursuant to this section if both of the following occur:

38 (1) The department determines that the average
39 statewide scrap values paid by willing purchasers are less

1 than the average scrap values used as the basis for the
2 processing fee calculation.

3 (2) The department determines that adjusting the
4 processing fee is necessary to further the objectives of this
5 division.

6 (e) The calculations of the statewide weighted
7 average values and processing fee made pursuant to
8 subdivision (b) shall be based on audited surveys of the
9 costs specified in subdivision (a) at existing certified
10 recycling centers, reverse vending machines, and
11 processors, with standardized modifications for
12 transportation distances and factors specific to a
13 particular region, as determined by the department, and,
14 if the container is not recyclable, local disposal fees. The
15 processing fee shall be calculated in a manner ~~which~~ *that*
16 furthers the purposes of this division and the fee shall be
17 sufficient to establish sufficient recycling locations and
18 processors to achieve the goals established pursuant to
19 subdivision (c) of Section 14501 and Section 14571.
20 Except for the first calculation of a processing fee made
21 pursuant to this section, 60 days prior to the annual
22 calculation of the processing fee, the department shall
23 submit a report to the Chairperson of the Assembly
24 Natural Resources Committee and the Chairperson of the
25 Senate Natural Resources and Wildlife Committee. The
26 report shall include a summary of the fluctuations of costs
27 and scrap values necessitating the recalculation. The
28 report shall also highlight changes in markets, new
29 technologies, and other business and economic factors.
30 The report shall include a description of the average per
31 container statewide costs of recycling beverage
32 containers, by each material type, for the following
33 recycling systems, including a description of any
34 assumptions used to allocate undifferentiated costs
35 among material types, and a brief statement of the reason
36 for the adoption of these assumptions *their adoption*:

37 (1) Automated recycling centers.

38 (2) Staffed recycling centers.

39 (3) Recycling centers established since September 29,
40 1988.

1 (4) Recycling centers established prior to September
2 29, 1988.

3 (5) Recyclers receiving convenience incentive
4 payments, as feasible.

5 (6) Nonprofit dropoff programs.

6 (7) Curbside recycling programs.

7 (f) (1) Except as provided in paragraphs (2) and (3),
8 every beverage manufacturer shall pay to the
9 department the applicable processing fee for each
10 container sold or transferred to a distributor or dealer
11 within 40 days of the sale in the form and in the manner
12 which the department may prescribe.

13 (2) (A) Notwithstanding Section 14506, with respect
14 to the payment of processing fees for beer and other malt
15 beverages manufactured ~~outside~~ *outside of* the state, the
16 beverage manufacturer shall be deemed to be the person
17 or entity named on the certificate of compliance issued
18 pursuant to Section 23671 of the Business and Professions
19 Code. If the department is unable to collect the
20 processing fee from the person or entity named on the
21 certificate of compliance, the department shall give
22 written notice by certified mail to that person or entity.
23 The notice shall state that the processing fee shall be
24 remitted in full within 30 days of issuance of the notice or
25 the person or entity shall not be permitted to offer that
26 beverage brand for sale within the state. If the person or
27 entity fails to remit the processing fee within 30 days of
28 issuance of the notice, the department shall notify the
29 Department of Alcoholic Beverage Control that the
30 certificate holder has failed to comply, and the
31 Department of Alcoholic Beverage Control shall prohibit
32 the offering or sale of that beverage brand within the
33 state.

34 (B) The department shall enter into a contract with
35 the Department of Alcoholic Beverage Control, pursuant
36 to Section 14536.5, concerning the implementation of this
37 paragraph, which shall include a provision reimbursing
38 the Department of Alcoholic Beverage Control for its
39 costs incurred in implementing this paragraph.

1 (3) (A) Notwithstanding paragraph (1), a beverage
2 manufacturer may, upon the approval of the department,
3 elect to make a single annual payment of processing fees,
4 if the beverage manufacturer's projected processing fees
5 for a calendar year total less than one thousand dollars
6 (\$1,000).

7 (B) An annual processing fee payment made pursuant
8 to this paragraph is due and payable on or before
9 February 1 for every beverage container sold or
10 transferred by the beverage manufacturer to a
11 distributor or dealer in the previous calendar year.

12 (C) A beverage manufacturer shall notify the
13 department of its intent to make an annual processing fee
14 payment pursuant to this paragraph on or before January
15 31 of the calendar year preceding the year in which the
16 payment will be due.

17 (4) The department shall pay the processing
18 payments on redeemed containers to processors, in the
19 same manner as it pays refund values pursuant to Sections
20 14573 and 14573.5. The department shall pay the
21 processing fees collected on unredeemed containers into
22 the fund. The department ~~shall~~ may not use processing
23 fees collected on unredeemed beverage containers to pay
24 all or a portion of the processing costs determined
25 pursuant to subdivision (a). The processor shall pay the
26 recycling center that portion of the processing payment
27 representing the actual cost and financial return incurred
28 by the recycling center, as specified in subdivision (a).

29 (g) When assessing processing fees pursuant to
30 subdivision (b), the department shall assess the
31 processing fee on each container sold, by the type of
32 material of the container, assuming that every container
33 sold will be redeemed for recycling, whether or not the
34 container is actually recycled. When calculating and
35 assessing processing fees, the department also shall not
36 assume that redemption bonuses will be kept by
37 recycling centers or locations.

38 (h) The container manufacturer, or a designated
39 agent, shall pay to, or credit, the account of the beverage

1 manufacturer ~~in~~ an amount equal to the processing
2 payment.

3 (i) This section shall become operative January 1, 1999.

4 SEC. 169. Section 33001 of the Public Resources Code
5 is amended to read:

6 33001. The Legislature hereby finds and declares that
7 the Santa Monica Mountains Zone, as defined in Section
8 ~~33104~~ 33105, is a unique and valuable economic,
9 environmental, agricultural, scientific, educational, and
10 recreational resource ~~which~~ *that* should be held in trust
11 for present and future generations; that, as the last large
12 undeveloped area contiguous to the shoreline within the
13 greater Los Angeles metropolitan region, comprised of
14 Los Angeles and Ventura Counties, it provides essential
15 relief from the urban environment; ~~and~~ that it exists as a
16 single ecosystem in which changes that affect one part
17 may also affect all other parts; and that the preservation
18 and protection of this resource is in the public interest.

19 SEC. 170. Section 64 of the Revenue and Taxation
20 Code is amended to read:

21 64. (a) Except as provided in subdivision (i) of
22 Section 61 and subdivisions (c) and (d) of this section, the
23 purchase or transfer of ownership interests in legal
24 entities, such as corporate stock or partnership or limited
25 liability company interests, shall not be deemed to
26 constitute a transfer of the real property of the legal
27 entity. This subdivision is applicable to the purchase or
28 transfer of ownership interests in a partnership without
29 regard to whether it is a continuing or a dissolved
30 partnership.

31 (b) Any corporate reorganization, where all of the
32 corporations involved are members of an affiliated group,
33 and that qualifies as a reorganization under Section 368 of
34 the United States Internal Revenue Code and that is
35 accepted as a nontaxable event by similar California
36 statutes, or any transfer of real property among members
37 of an affiliated group, or any reorganization of farm credit
38 institutions pursuant to the federal Farm Credit Act of
39 1971 (Public Law 92-181), as amended, shall not be a
40 change of ownership. The taxpayer shall furnish proof,

1 under penalty of perjury, to the assessor that the transfer
2 meets the requirements of this subdivision.

3 For purposes of this subdivision, “affiliated group”
4 means one or more chains of corporations connected
5 through stock ownership with a common parent
6 corporation if both of the following conditions are met:

7 (1) One hundred percent of the voting stock,
8 exclusive of any share owned by directors, of each of the
9 corporations, except the parent corporation, is owned by
10 one or more of the other corporations.

11 (2) The common parent corporation owns, directly,
12 100 percent of the voting stock, exclusive of any shares
13 owned by directors, of at least one of the other
14 corporations.

15 (c) (1) When a corporation, partnership, limited
16 liability company, other legal entity, or any other person
17 obtains control through direct or indirect ownership or
18 control of more than 50 percent of the voting stock of any
19 corporation, or obtains a majority ownership interest in
20 any partnership, limited liability company, or other legal
21 entity through the purchase or transfer of corporate
22 stock, partnership, or limited liability company interest,
23 or ownership interests in other legal entities, including
24 any purchase or transfer of 50 percent or less of the
25 ownership interest through which control or a majority
26 ownership interest is obtained, the purchase or transfer
27 of that stock or other interest shall be a change of
28 ownership of the real property owned by the corporation,
29 partnership, limited liability company, or other legal
30 entity in which the controlling interest is obtained.

31 (2) On or after January 1, 1996, when an owner of a
32 majority ownership interest in any partnership obtains all
33 of the remaining ownership interests in that partnership
34 or otherwise becomes the sole partner, the purchase or
35 transfer of the minority interests, subject to the
36 appropriate application of the step-transaction doctrine,
37 shall not be a change in ownership of the real property
38 owned by the partnership.

39 (d) If property is transferred on or after March 1, 1975,
40 to a legal entity in a transaction excluded from change in

ownership by paragraph (2) of subdivision (a) of Section 62, then the persons holding ownership interests in that legal entity immediately after the transfer shall be considered the “original coowners.” Whenever shares or other ownership interests representing cumulatively more than 50 percent of the total interests in the entity are transferred by any of the original coowners in one or more transactions, a change in ownership of that real property owned by the legal entity shall have occurred, and the property that was previously excluded from change in ownership under the provisions of paragraph (2) of subdivision (a) of Section 62 shall be reappraised.

The date of reappraisal shall be the date of the transfer of the ownership interest representing individually or cumulatively more than 50 percent of the interests in the entity.

A transfer of shares or other ownership interests that results in a change in control of a corporation, partnership, limited liability company, or any other legal entity is subject to reappraisal as provided in subdivision (c) rather than this subdivision.

(e) ~~In order to~~ To assist in the determination of whether a change of ownership has occurred under subdivisions (c) and (d), the Franchise Tax Board shall include a question in substantially the following form on returns for partnerships, banks, and corporations (except tax-exempt organizations):

If the corporation (or partnership or limited liability company) owns real property in California, has cumulatively more than 50 percent of the voting stock (or more than 50 percent of total interest in both partnership or limited liability company capital and partnership or limited liability company profits) (1) been transferred by the corporation (or partnership or limited liability company) since March 1, 1975, or (2) been acquired by another legal entity or person during the year? (See instructions.)

1 If the entity answers “yes” to (1) or (2) in the above
2 question, then the Franchise Tax Board shall furnish the
3 names and addresses of that entity and of the stock or
4 partnership or limited liability company ownership
5 interest transferees to the State Board of Equalization.

6 SEC. 171. Section 401.15 of the Revenue and Taxation
7 Code is amended to read:

8 401.15. (a) Notwithstanding any other provision of
9 law, for any county that makes available the credits
10 provided for in Section 5096.3, the full cash values of
11 certificated aircraft for fiscal years to the 1997–98 fiscal
12 year, inclusive, are presumed to be those values enrolled
13 by the county assessor or, in the case of timely escape
14 assessments upon certificated aircraft issued on or after
15 April 1, 1998, pursuant to Sections 531, 531.3, and 531.4, the
16 values enrolled upon those escape assessments, provided
17 *that* the escape assessment is made in accordance with
18 the methodology in subdivision (b). For escape
19 assessments for fiscal years to the 1997–98 fiscal year,
20 inclusive, the assessor shall use the methodology and
21 minimum and market values set by the California
22 Assessors’ Association for the applicable fiscal year in lieu
23 of the methodology set forth in subparagraph (C) or (D)
24 of paragraph (1) of subdivision (b). The assessor is not
25 required to revise or change existing enrolled
26 assessments that are not subject to escape assessment to
27 reflect the methodology in this section. Nothing in this
28 section precludes audit adjustments and offsets as set
29 forth in Section 469 or the correction of reporting errors
30 raised by an airline. Nothing in this section affects any
31 presumption of correctness concerning allocation of
32 aircraft values.

33 (b) (1) For the 1998–99 fiscal year to the 2002–03 fiscal
34 year, inclusive, and including escape assessments levied
35 on or after April 1, 1998, for any fiscal year to the 2002–03
36 fiscal year, inclusive, except as otherwise provided in
37 subdivision (a), certificated aircraft shall be presumed to
38 be valued at full market value if all of the following
39 conditions are met:

1 (A) Except as provided in subparagraph (D), value is
2 derived using original cost. The original cost shall be the
3 greater of the following:

4 (i) Taxpayer's cost for that individual aircraft reported
5 in accordance with generally accepted accounting
6 principles, so long as that produces net acquisition cost,
7 and to the extent not included in the taxpayer's cost,
8 transportation costs and capitalized interest and the cost
9 of any capital addition or modification made before a
10 transaction described in clause (ii).

11 (ii) The cost established in a sale/leaseback or
12 assignment of purchase rights transaction for that
13 individual aircraft that transfers the benefits and burdens
14 of ownership to the lessor for United States federal
15 income tax purposes.

16 If the original cost for leased aircraft cannot be
17 determined from information reasonably available to the
18 taxpayer, original cost may be determined by reference
19 to the "average new prices" column of the Airliner Price
20 Guide for that model, series, and year of manufacture of
21 aircraft. If information is not available in the "average
22 new prices" column for that model, series, and year, the
23 original cost may be determined using the best indicator
24 of original cost plus all conversion costs incurred for that
25 aircraft. In the event of a merger, bankruptcy, or change
26 in accounting methods by the reporting airline, there
27 shall be a rebuttable presumption that the cost of the
28 individual aircraft and the acquisition date reported by
29 the acquired company, if available, or the cost reported
30 prior to the change in accounting method—is, *are* the
31 original cost and the applicable acquisition date.

32 (B) Original cost, plus the cost of any capital additions
33 or modifications not otherwise included in the original
34 cost, shall be adjusted from the date of the acquisition of
35 the aircraft to the lien date using the producer price index
36 for aircraft and a 16-year straight-line percent good table
37 starting from the delivery date of the aircraft to the
38 current owner or, in the case of a sale/leaseback or
39 assignment of purchase rights transaction, as described in
40 this section, the current operator with a minimum

1 combined factor of 25 percent, unless this adjustment
2 results in a value less than the minimum value for that
3 aircraft computed pursuant to subparagraph (C), in
4 which case the minimum value may be used. If original
5 cost is determined by reference to the Airliner Price
6 Guide “average new prices” column, the adjustments
7 required by this paragraph shall be made by setting the
8 acquisition date of the aircraft to be the date of the
9 aircraft’s manufacture.

10 (C) For certificated aircraft of a model and series that
11 has been in revenue service for eight or more years, the
12 minimum value shall not exceed the average of the used
13 aircraft prices shown in columns other than the “average
14 new prices” column for used aircraft of the oldest aircraft
15 for that model and series in the Airliner Price Guide most
16 recently published as of the lien date. Minimum values
17 shall not be utilized for certificated aircraft of a model and
18 series that has been in revenue service for less than eight
19 years.

20 (D) For out-of-production aircraft that were
21 recommended to be valued by a market approach for
22 1998 by the California Assessors’ Association, assessments
23 will be based at the lower of the following:

24 (i) The values established by the ~~Association~~
25 *association* for the 1998 lien date.

26 (ii) The average of the used aircraft prices shown in
27 the columns other than the “average new prices” column
28 for used aircraft of the five oldest years for the aircraft
29 model and series or that lesser time for which data is
30 available in the Airliner Price Guide.

31 (2) Notwithstanding paragraph (1), in computing
32 assessed value, the assessor may allow for extraordinary
33 obsolescence if supported by market evidence and the
34 taxpayer may challenge the assessment for failure to do
35 so. To constitute market evidence of extraordinary
36 obsolescence and to permit an assessment appeal, the
37 evidence must show that the functional ~~and—or~~ *and/or*
38 economic obsolescence is in excess of 10 percent of the
39 value for the aircraft model and series otherwise

1 established pursuant to subparagraph (B), (C), or (D) of
2 paragraph (1).

3 (3) For purposes of paragraph (1), if the Airliner Price
4 Guide ceases to be published or the format significantly
5 changes, a guide or adjustment agreed to by the airlines
6 and the taxing counties shall be substituted.

7 (c) (1) For the 2003–04 fiscal year, certificated
8 aircraft shall be presumed to be valued at full market
9 value if all of the following conditions are met:

10 (A) Except as provided in subparagraph (D), value is
11 derived using original cost. The original cost shall be the
12 greater of the following:

13 (i) Taxpayer’s cost for that individual aircraft reported
14 in accordance with generally accepted accounting
15 principles, so long as that produces net acquisition cost,
16 and to the extent not included in the taxpayer’s cost,
17 transportation costs and capitalized interest and the cost
18 of any capital addition or modification made before a
19 transaction described in clause (ii).

20 (ii) Taxpayer’s cost as established pursuant to this
21 subdivision plus one-half of the incremental difference
22 between taxpayer’s cost and the cost established in a
23 sale/leaseback or assignment of purchase rights
24 transaction for individual aircraft that transfers the
25 benefits and burdens of ownership to the lessor for United
26 States federal income tax purposes.

27 If the original cost for leased aircraft cannot be
28 determined from information reasonably available to the
29 taxpayer, original cost may be determined by reference
30 to the “average new prices” column of the Airliner Price
31 Guide for that model, series, and year of manufacture of
32 aircraft. If information is not available in the “average
33 new prices” column for that model, series, and year, the
34 original cost may be determined using the best indicator
35 of original cost plus all conversion costs incurred for that
36 aircraft. In the event of a merger, bankruptcy, or change
37 in accounting methods by the reporting airline, there
38 shall be a rebuttable presumption that the cost of the
39 individual aircraft and the acquisition date reported by
40 the acquired company, if available, or the cost reported

1 prior to the change in accounting method—is, *are* the
2 original cost and the applicable acquisition date.

3 (B) Original cost, plus the cost of any capital additions
4 or modifications not otherwise included in original cost,
5 shall be adjusted from the date of the acquisition of the
6 aircraft to the lien date using the producer price index for
7 aircraft and a 16-year straight-line percent good table
8 starting from the delivery date of the aircraft to the
9 current owner or, in the case of a sale/leaseback or
10 assignment of purchase rights transaction, as described in
11 this section, the current operator with a minimum
12 combined factor of 25 percent, unless this adjustment
13 results in a value less than the minimum value for that
14 aircraft computed pursuant to subparagraph (C), in
15 which case the minimum value may be used. If original
16 cost is determined by reference to the Airliner Price
17 Guide “average new prices” column, the adjustments
18 required by this paragraph shall be made by setting the
19 acquisition date of the aircraft to be the date of the
20 aircraft’s manufacture.

21 (C) For certificated aircraft of a model and series that
22 has been in revenue service for eight or more years, the
23 minimum value shall not exceed the average of the used
24 aircraft prices shown in columns other than the “average
25 new prices” column for used aircraft of the oldest aircraft
26 for that model and series in the Airliner Price Guide most
27 recently published as of the lien date. Minimum values
28 shall not be utilized for certificated aircraft of a model and
29 series that has been in revenue service for less than eight
30 years.

31 (D) For out-of-production aircraft that were
32 recommended to be valued by a market approach for
33 1998 by the California Assessors’ Association, their
34 assessments shall be based at the lower of the following:

35 (i) The values established by the Association for the
36 1998 lien date.

37 (ii) The average of the used aircraft prices shown in
38 the columns other than the “average new prices” column
39 for used aircraft of the five oldest years for the aircraft

1 model and series or that lesser time for which data is
2 available in the Airliner Price Guide.

3 (2) Notwithstanding paragraph (1), in computing
4 assessed value, the assessor may allow for extraordinary
5 obsolescence if supported by market evidence and the
6 taxpayer may challenge the assessment for failure to do
7 so. To constitute market evidence of extraordinary
8 obsolescence and to permit an assessment appeal, the
9 evidence must show that the functional and or economic
10 obsolescence is in excess of 10 percent of the value for the
11 aircraft model and series otherwise established pursuant
12 to subparagraph (B), (C), or (D) of paragraph (1).

13 (3) For purposes of paragraph (1), if the Airliner Price
14 Guide ceases to be published or the format significantly
15 changes, a guide or adjustment agreed to by the airlines
16 and the taxing counties shall be substituted.

17 (d) ~~In order to~~ To calculate the values prescribed in
18 subdivisions (b) and (c), the taxpayer shall, to the extent
19 that information is reasonably available to the taxpayer,
20 furnish the county assessor with an annual property
21 statement that includes the aircraft original costs as
22 defined in subparagraph (A) of paragraph (1) of
23 subdivision (b) or (c). ~~In the event~~ If an air carrier that
24 has this information reasonably available to it fails to
25 report original cost and additions, as required by ~~Revenue~~
26 ~~and Taxation Code~~ Sections 441 and 442, an assessor may
27 ~~in that case~~ make an appropriate assessment pursuant to
28 ~~Revenue and Taxation Code~~ Section 501.

29 SEC. 172. Section 995.2 of the Revenue and Taxation
30 Code is amended to read:

31 995.2. The term “basic operational program,” as used
32 in Section 995, means a computer program that is
33 fundamental and necessary to the functioning of a
34 computer. A basic operational program is that part of an
35 operating system including supervisors, monitors,
36 executives, and control or master programs that consist of
37 the control program elements of that system.

38 For purposes of this section, the terms “control
39 program” and “basic operational program” are
40 interchangeable. A control program, as opposed to a

1 processing program, controls the operation of a computer
2 by managing the allocation of all system resources,
3 including the central processing unit, main storage,
4 input/output devices and processing programs. A
5 processing program is used to develop and implement
6 the specific applications that the computer is to perform.
7 Its operation is possible only through the facilities
8 provided by the control program. It is not in itself
9 fundamental and necessary to the functioning of a
10 computer.

11 Excluded from the term “basic operational program”
12 are processing programs, which consist of language
13 translators, including, but not limited to, assemblers and
14 compilers; service programs, including, but not limited
15 to, data set utilities, sort/merge utilities, and emulators;
16 data management systems, also known as generalized
17 file-processing software; and application programs,
18 including, but not limited to, payroll, inventory control,
19 and production control. Also excluded from the term
20 “basic operational program” are programs or parts of
21 programs developed for or by a user if they were
22 developed solely for the solution of an individual
23 operational problem of the user.

24 A control program, as used in this section, includes *the*
25 *following* functions—as: selection, assignment, and control
26 of input and output devices; loading of programs,
27 including selection of programs from a system resident
28 library; handling the steps necessary to accomplish
29 job-to-job transition; controlling the allocation of
30 memory; controlling concurrent operation of multiple
31 programs or computers; and protecting data from being
32 inadvertently destroyed as a result of operator program
33 error.

34 SEC. 173. Section 3772.5 of the Revenue and Taxation
35 Code is amended to read:

36 3772.5. For purposes of this chapter:

37 (a) “Low-income persons” means persons and families
38 of low or moderate income, as defined by Section 50093
39 of the Health and Safety Code.

(b) “Nonprofit organization” means a nonprofit organization incorporated pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code for the purpose of acquisition of either of the following:

(1) Single-family or multifamily dwellings for rehabilitation and sale or rent to low-income persons, or for other use to serve low-income persons.

(2) Vacant land for construction of residential dwellings and subsequent sale or rent to low-income persons, for other use to serve low-income persons, or for dedication of that vacant land to public use.

(c) “Rehabilitation” means repairs and improvements to a substandard building, as defined in ~~subdivision (f) of Section 17920~~ Section 17920.3 of the Health and Safety Code, necessary to make it a building ~~which~~ that is not a substandard building.

SEC. 174. Section 17275.6 of the Revenue and Taxation Code is amended to read:

17275.6. For taxable years beginning on or after January 1, 1998, Section 170(e)(1) of the Internal Revenue Code, relating to certain contributions of ordinary income and capital gain property, is modified to provide that for purposes of applying Section 170(e)(1) of the Internal Revenue Code in the case of a charitable contribution of stock in an ~~S-corporation~~, “S corporation,” rules similar to the rules of Section 751 of the Internal Revenue Code, relating to unrealized receivables and inventory items, shall apply in determining whether gain on the stock would have been long-term capital gain if the stock were sold by the taxpayer.

SEC. 175. Section 19057 of the Revenue and Taxation Code is amended to read:

19057. (a) Except in the case of a false or fraudulent return and except as otherwise expressly provided in this part, every notice of a proposed deficiency assessment shall be mailed to the taxpayer within four years after the return was filed. No deficiency shall be assessed or collected with respect to the year for which the return was filed unless the notice is mailed within the four-year

1 period or the period otherwise provided. For purposes of
2 this chapter, the term “return” means the return
3 required to be filed by the taxpayer and does not include
4 a return of any person from whom the taxpayer has
5 received an item of income, gain, loss, deduction, or
6 credit.

7 (b) The running of the period of limitations provided
8 in subdivision (a) on mailing a notice of proposed
9 deficiency assessment shall, in a case under Title 11 of the
10 United States Code, be suspended for any period during
11 which the Franchise Tax Board is prohibited by reason of
12 that case from mailing the notice of proposed deficiency
13 assessment and *for* 60 days thereafter.

14 (c) Where, within the 60-day period ending on the day
15 on which the time prescribed in this section for the
16 assessment of any tax imposed under Part 10
17 (commencing with Section 17001) or Part 11
18 (commencing with Section 23001) for any taxable year
19 would otherwise expire, the Franchise Tax Board
20 receives a written document, other than an amended
21 return or a report required by Section 18622, signed by
22 the taxpayer showing that the taxpayer owes an
23 additional amount of that tax for that taxable year, the
24 period for the assessment of an additional amount in
25 excess of the amount shown on either an original or
26 amended return shall not expire before the day 60 days
27 after the day on which the Franchise Tax Board receives
28 that document.

29 (d) If a taxpayer determines in good faith that it is an
30 exempt organization and files a return as ~~such~~ *an exempt*
31 *organization* under Section 23772, and if the taxpayer is
32 thereafter held to be a taxable organization for the
33 taxable year for which the return is filed, that return shall
34 be deemed the return of the organization for the
35 purposes of this section.

36 SEC. 176. Section 19141.6 of the Revenue and
37 Taxation Code is amended to read:

38 19141.6. (a) Each taxpayer determining its income
39 subject to tax pursuant to Section 25101 or electing to file
40 pursuant to Section 25110 shall, for income years

beginning on or after January 1, 1994, maintain (in the location, in the manner, and to the extent prescribed in regulations ~~which shall be~~ promulgated by the Franchise Tax Board on or before December 31, 1995) and make available upon request all of the following:

(1) Any records as may be appropriate to determine the correct treatment of the components that are a part of one or more unitary businesses for purposes of determining the income derived from or attributable to this state pursuant to Section 25101 or 25110.

(2) Any records as may be appropriate to determine the correct treatment of amounts that are attributable to the classification of an item as business or nonbusiness income for purposes of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11.

(3) Any records as may be appropriate to determine the correct treatment of the apportionment factors for purposes of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11.

(4) Documents and information, including any questionnaires completed and submitted to the Internal Revenue Service, that are necessary to audit issues involving attribution of income to the United States or foreign jurisdictions under Section 882 *of*, or Subpart F of Part III of Subchapter N of, or similar ~~sections~~ *provisions* of, the Internal Revenue Code.

(b) For purposes of this section:

(1) Information for any year shall be retained for that period of time in which the taxpayers' income or franchise tax liability to this state may be subject to adjustment, including all periods in which additional income or franchise taxes may be assessed, not to exceed eight years from the due date or extended due date of the return, or during which a protest is pending before the Franchise Tax Board, or an appeal is pending before the State Board of Equalization, or a lawsuit is pending in the courts of this state or the United States with respect to California franchise or income tax.

(2) "Related party" means corporations that are related because one owns or controls, directly or

1 indirectly, more than 50 percent of the stock of the other
2 or because more than 50 percent of the voting stock of
3 each is owned or controlled, directly or indirectly, by the
4 same interests.

5 (3) "Records" includes any books, papers, or other
6 data.

7 (c) (1) If a corporation subject to this section fails to
8 maintain or fails to cause another to maintain records as
9 required by subdivision (a), that corporation shall pay a
10 penalty of ten thousand dollars (\$10,000) for each income
11 year with respect to which the failure occurs.

12 (2) If any failure described in paragraph (1) continues
13 for more than 90 days after the day on which the
14 Franchise Tax Board mails notice of the failure to the
15 corporation, that corporation shall pay a penalty (in
16 addition to the amount required under paragraph (1)) of
17 ten thousand dollars (\$10,000) for each 30-day period (or
18 fraction thereof) during which the failure continues after
19 the expiration of the 90-day period. The additional
20 penalty imposed by this subdivision shall not exceed a
21 maximum of fifty thousand dollars (\$50,000) if the failure
22 to maintain or the failure to cause another to maintain is
23 not willful. This maximum shall apply with respect to
24 income years beginning on or after January 1, 1994, and
25 before the earlier of the first day of the month following
26 the month in which regulations are adopted pursuant to
27 this section or December 31, 1995.

28 (3) For purposes of this section, the time prescribed by
29 regulations to maintain records (and the beginning of the
30 90-day period after notice by the Franchise Tax Board)
31 shall be treated as not earlier than the last day on which
32 (as shown to the satisfaction of the Franchise Tax Board)
33 reasonable cause existed for failure to maintain the
34 records.

35 (d) (1) The Franchise Tax Board may apply the rules
36 of paragraph (2) whether or not the board begins a
37 proceeding to enforce a subpoena, or subpoena duces
38 tecum, if subparagraphs (A), (B), and (C) apply:

39 (A) For purposes of determining the correct
40 treatment under Part 11 (commencing with Section

1 23001) of the items described in subdivision (a), the
2 Franchise Tax Board issues a subpoena or subpoena duces
3 tecum to a corporation to produce (either directly or as
4 agent for the related party) any records or testimony.

5 (B) The subpoena or subpoena duces tecum is not
6 quashed in a proceeding begun under paragraph (3) and
7 is not determined to be invalid in a proceeding begun
8 under Section 19504 to enforce the subpoena or subpoena
9 duces tecum.

10 (C) The corporation does not substantially comply in
11 a timely manner with the subpoena or subpoena duces
12 tecum and the Franchise Tax Board has sent by certified
13 or registered mail a notice to that corporation that it has
14 not substantially complied.

15 (D) If the corporation fails to maintain or fails to cause
16 another to maintain records as required by subdivision
17 (a), and by reason of that failure, the subpoena, or
18 subpoena duces tecum, is quashed in a proceeding
19 described in subparagraph (B) or the corporation is not
20 able to provide the records requested in the subpoena or
21 subpoena duces tecum, the Franchise Tax Board may
22 apply the rules of paragraph (2) to any of the items
23 described in subdivision (a) to which the records relate.

24 (2) (A) All of the following shall be determined by the
25 Franchise Tax Board in the Franchise Tax Board's sole
26 discretion from the Franchise Tax Board's own
27 knowledge or from information the Franchise Tax Board
28 may obtain through testimony or otherwise:

29 (i) The components that are a part of one or more
30 unitary businesses for purposes of determining the
31 income derived from or attributable to this state pursuant
32 to Section 25101 or 25110.

33 (ii) Amounts that are attributable to the classification
34 of an item as business or nonbusiness income for purposes
35 of Article 2 (commencing with Section 25120) of Chapter
36 17 of Part 11.

37 (iii) The apportionment factors for purposes of Article
38 2 (commencing with Section 25120) of Chapter 17 of Part
39 11.

1 (iv) The correct amount of income under Section 882
2 of, or Subpart F of Part III of, Subchapter N of, or similar
3 ~~sections~~ *provisions* of, the Internal Revenue Code.

4 (B) This paragraph shall apply to determine the
5 correct treatment of the items described in subdivision
6 (a) unless the corporation is authorized by its related
7 parties (in the manner and at the time as the Franchise
8 Tax Board shall prescribe) to act as the related parties'
9 limited agent solely for purposes of applying Section
10 19504 with respect to any request by the Franchise Tax
11 Board to examine records or produce testimony related
12 to any item described in subdivision (a) or with respect
13 to any subpoena or subpoena duces tecum for the records
14 or testimony. The appearance of persons or the
15 production of records by reason of the corporation being
16 an agent shall not subject those persons or records to legal
17 process for any purpose other than determining the
18 correct treatment under Part 11 of the items described in
19 subdivision (a).

20 (C) Determinations made in the sole discretion of the
21 Franchise Tax Board pursuant to this paragraph may be
22 appealed to the State Board of Equalization, in the
23 manner and at ~~a time, as provided~~ *the time prescribed* by
24 Section 19045 or 19324, or may be the subject of an action
25 to recover tax, in the manner and at a time, ~~as provided~~
26 *prescribed* by Section 19382. The review of
27 determinations by the board or the court shall be limited
28 to whether the determinations were arbitrary or
29 capricious, or are not supported by substantial evidence.

30 (3) (A) Notwithstanding any other law or rule of law,
31 any reporting corporation to which the Franchise Tax
32 Board issues a subpoena or subpoena duces tecum
33 referred to in subparagraph (A) of paragraph (1) shall
34 have the right to begin a proceeding to quash the
35 subpoena or subpoena duces tecum not later than the
36 90th day after the subpoena or subpoena duces tecum was
37 issued. In that proceeding, the Franchise Tax Board may
38 seek to compel compliance with the subpoena or
39 subpoena duces tecum.

(B) Notwithstanding any other law or rule of law, any reporting ~~bank~~ or corporation that has been notified by the Franchise Tax Board that it has determined that the corporation has not substantially complied with a subpoena or subpoena duces tecum referred to in paragraph (1) shall have the right to begin a proceeding to review the determination not later than the 90th day after the day on which the notice referred to in subparagraph (C) of paragraph (1) was mailed. If the proceeding is not begun on or before the 90th day, the determination by the Franchise Tax Board shall be binding and shall not be reviewed by any court.

(C) The superior courts of the State of California for the Counties of Los Angeles, Sacramento, and San Diego, and for the City and County of San Francisco, shall have jurisdiction to hear any proceeding brought under subparagraphs (A) and (B). Any order or other determination in the proceeding shall be treated as a final order that may be appealed.

(D) If any corporation takes any action as provided in subparagraphs (A) and (B), the running of any period of limitations under Sections 19057 to 19064, inclusive (relating to the assessment and collection of tax), or under Section 19704 (relating to criminal prosecutions) with respect to that corporation shall be suspended for the period during which the proceedings, and appeals therein, are pending. In no event shall any period expire before the 90th day after the day on which there is a final determination in the proceeding.

SEC. 177. Section 19271 of the Revenue and Taxation Code is amended to read:

19271. (a) (1) For purposes of this article:

(A) “Child support” means support of a child, spouse, or family as provided in Section 150 of the Family Code.

(B) “Child support delinquency” means a child support obligation that may include or be limited to interest, fees, or penalties, on which payment then due has not been received following the expiration of 90 days from the date payment is due.

1 (C) “Earnings” may include the items described in
2 Section 5206 of the Family Code.

3 (2) A county district attorney enforcing child support
4 obligations pursuant to Section 11475.1 of the Welfare and
5 Institutions Code shall refer child support delinquencies
6 to the Franchise Tax Board for collection. If there is a
7 child support delinquency at the time the case is opened
8 by the district attorney, the case shall be referred to the
9 Franchise Tax Board no later than 90 days after receipt of
10 the case by the district attorney. A county district
11 attorney may also refer to the Franchise Tax Board a child
12 support obligation that is 30 days or more past due, and
13 any of these obligations shall be collected as if they were
14 delinquencies otherwise described in this subdivision.

15 (3) Referrals shall be transmitted in the form and
16 manner prescribed by the Franchise Tax Board.

17 (4) ~~In order to~~ To manage the growth in the number
18 of referrals that it may receive, the Franchise Tax Board
19 may phase in the referrals as administratively necessary.

20 (5) At least 20 days prior to the date that the Franchise
21 Tax Board commences a collection action under this
22 article, the Franchise Tax Board shall mail notice of the
23 amount due to the obligated parent at the last known
24 address for payment and advise that person that failure
25 to pay will result in collection action. If the obligated
26 parent disagrees with the amount due, the obligated
27 parent shall be instructed to contact the county district
28 attorney.

29 (b) (1) (A) Except as otherwise provided in
30 subparagraph (B), when a delinquency is referred to the
31 Franchise Tax Board pursuant to subdivision (a), the
32 amount of the child support delinquency shall be
33 collected from any obligated parent by the Franchise Tax
34 Board in any manner authorized under the law for
35 collection of a delinquent personal income tax liability,
36 including, but not limited to, issuance of an order and levy
37 under Article 4 (commencing with Section 706.070) of
38 Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of
39 Civil Procedure in the manner provided for earnings
40 withholding orders for taxes. Any law providing for the

collection of a delinquent personal income tax liability shall apply to any delinquency referred under this article in the same manner and with the same force and effect and to the full extent as if the language of those laws had been incorporated in full into this article, except to the extent that any provision is either inconsistent with a provision of this article or is not relevant to this article.

(B) When a delinquency is referred to the Franchise Tax Board pursuant to subdivision (a), or at any time thereafter if the obligated parent owes a delinquent personal income tax liability, the Franchise Tax Board shall not engage in, or shall cease, any involuntary collection action to collect the delinquency referred under this article, until the delinquent personal income tax liability is paid in full. ~~In the event~~ If the obligated parent owes a delinquent personal income tax liability when a delinquency is referred, the Franchise Tax Board shall mail the notice specified in paragraph (4) (5) of subdivision (a). At any time thereafter, the Franchise Tax Board may mail any other notice to the obligated parent for voluntary payment as the Franchise Tax Board deems necessary. However, the Franchise Tax Board may engage in the collection of a delinquency referred pursuant to subdivision (a) under either of the following circumstances:

(i) The delinquent personal income tax liability is discharged from accountability pursuant to Section 13940 of the Government Code.

(ii) The obligor has entered into an installment payment agreement for the delinquent personal income tax liability and is in compliance with that agreement, and the Franchise Tax Board determines that collection of the delinquency referred pursuant to subdivision (a) would not jeopardize payments under the installment agreement.

(C) For purposes of subparagraph (B):

(i) “Involuntary collection action” means those actions authorized by Section 18670, 18670.5, 18671, or 19264, by Article 3 (commencing with Section 19231), or by Chapter 5 (commencing with Section 706.010) of

1 Division 2 of Title 9 of Part 2 of the Code of Civil
2 Procedure.

3 (ii) “Delinquent personal income tax liability” means
4 any taxes, additions to tax, penalties, interest, fees, or
5 other related amounts due and payable under Part 10
6 (commencing with Section 17001) or this part.

7 (iii) “Voluntary payment” means any payment made
8 by obligated parents in response to the notice specified in
9 paragraph ~~(4)~~ (5) of subdivision (a) or any other notice
10 for voluntary payment mailed by the Franchise Tax
11 Board.

12 (2) Any compensation, fee, commission, expense, or
13 ~~any~~ other fee for service incurred by the Franchise Tax
14 Board in the collection of a child support delinquency
15 authorized under this article shall not be an obligation of,
16 or collected from, the obligated parent. A referred child
17 support delinquency shall be final and due and payable
18 to the State of California upon written notice to the
19 obligated parent by the Franchise Tax Board.

20 (3) For purposes of administering this article:

21 (A) This chapter and Chapter 7 (commencing with
22 Section 19501) shall apply, except as otherwise provided
23 by this article.

24 (B) Any services, information, or enforcement
25 remedies available to a district attorney or the Title IV-D
26 agency in collecting support delinquencies or locating
27 absent or noncustodial parents shall be available to the
28 Franchise Tax Board for purposes of collecting child
29 support delinquencies under this article, including, but
30 not limited to, any information that may be disclosed by
31 the Franchise Tax Board to the California Parent Locator
32 Service under Section 19548.

33 (C) A request by the Franchise Tax Board for
34 information from a financial institution shall be treated in
35 the same manner and to the same extent as a request for
36 information from a district attorney referring to a support
37 order pursuant to Section 11475.1 of the Welfare and
38 Institutions Code for purposes of Chapter 20
39 (commencing with Section 7460) of Division 7 of Title 1
40 of the Government Code (relating to governmental

1 access to financial records), notwithstanding any other
2 provision of law which is inconsistent or contrary to this
3 paragraph.

4 (D) The amount to be withheld in an order and levy
5 to collect child support delinquencies under Article 4
6 (commencing with Section 706.070) of Chapter 5 of
7 Division 2 of Title 9 of Part 2 of the Code of Civil
8 Procedure is the amount required to be withheld
9 pursuant to an earnings withholding order for support
10 under Section 706.052 of the Code of Civil Procedure.

11 (E) Nothing in this article shall be construed to modify
12 the tax intercept provisions of Article 8 (commencing
13 with Section 708.710) of Chapter 6 of Division 2 of Title
14 9 of Part 2 of the Code of Civil Procedure.

15 (c) Interest on the delinquency shall be computed
16 pursuant to Section 685.010 of the Code of Civil
17 Procedure.

18 (d) ~~In the event~~ If the collection action would cause
19 undue financial hardship to the obligated parent, would
20 threaten the health or welfare of the obligated parent or
21 his or her family, or would cause undue irreparable loss
22 to the obligated parent, the obligated parent may notify
23 the Franchise Tax Board, which shall, upon being
24 notified, refer the obligated parent to the referring
25 county district attorney, unless the Franchise Tax Board
26 is directed otherwise by the county district attorney for
27 purposes of more effectively administering this article.

28 (e) (1) In no event shall a collection under this article
29 be construed to be a payment of income taxes imposed
30 under this part.

31 (2) ~~In the event~~ If an obligated parent overpays a
32 liability imposed under this part, the overpayment shall
33 not be credited against any delinquency collected
34 pursuant to this article. ~~In the event~~ If an overpayment
35 of a liability imposed under this part is offset and
36 distributed to a referring county district attorney
37 pursuant to Sections 12419.3 and 12419.5 of the
38 Government Code or Section 708.740 of the Code of Civil
39 Procedure, and thereby reduces the amount of the
40 referred delinquency, the referring county district

1 attorney shall immediately notify the Franchise Tax
2 Board of that reduction, unless otherwise directed for
3 purposes of more effectively administering this article.

4 (3) In no event shall the district attorney refer, or the
5 Franchise Tax Board collect, under this article any
6 delinquency if both of the following circumstances exist:

7 (A) A court has ordered an obligated parent to make
8 scheduled payments on a child support arrearages
9 obligation.

10 (B) The obligated parent is in compliance with the
11 order.

12 (4) A child support delinquency need not be referred
13 to the Franchise Tax Board pursuant to this article if an
14 earnings assignment order or a notice of assignment has
15 been served on the obligated parent's employer and
16 court-ordered support is being paid pursuant to the
17 earnings assignment order or the notice of assignment or
18 at least 50 percent of the obligated parent's earnings are
19 being withheld for support.

20 (5) A child support delinquency need not be referred
21 to the Franchise Tax Board for collection if a jurisdiction
22 outside this state is enforcing the support order.

23 (f) Except as otherwise provided in this article, any
24 child support delinquency referred to the Franchise Tax
25 Board pursuant to this article shall be treated as a child
26 support delinquency for all other purposes, and any
27 collection action by the county district attorney or the
28 Franchise Tax Board with respect to any delinquency
29 referred pursuant to this article shall have the same
30 priority against attachment, execution, assignment, or
31 other collection action as is provided by any other
32 provision of state law.

33 (g) Except as otherwise specifically provided in
34 subparagraph (B) of paragraph (1) of subdivision (b),
35 the child support collection activities authorized by this
36 article shall not interfere with the primary mission of the
37 Franchise Tax Board to fairly and efficiently administer
38 the ~~Revenue and Taxation Code~~ *provisions of this code*
39 for which it is responsible.



1 (h) Information disclosed to the Franchise Tax Board
2 shall be considered information that may be disclosed by
3 the Franchise Tax Board under the authority of Section
4 19548 and may be disseminated by the Franchise Tax
5 Board accordingly for the purposes specified in Sections
6 11478 and 11478.5 of the Welfare and Institutions Code (in
7 accordance with, and to the extent permitted by, Section
8 11478.1 of the Welfare and Institutions Code and any
9 other state or federal law).

10 (i) A county may apply to the State Department of
11 Social Services for an exemption from subdivision (a).
12 The State Department of Social Services shall grant an
13 exemption only if the county has a program for collecting
14 delinquent child support, including hardware and
15 software, that is similar or identical to the technology
16 used by the Franchise Tax Board in implementing its
17 child support collections program and the county
18 program was in operation as of April 1, 1997.

19 SEC. 178. Section 23038.5 of the Revenue and
20 Taxation Code is amended to read:

21 23038.5. (a) Section 7704 of the Internal Revenue
22 Code, relating to certain publicly traded partnerships
23 treated as corporations, shall apply, except as otherwise
24 provided.

25 (b) (1) Section 7704(a) of the Internal Revenue Code
26 shall not apply to an electing 1987 partnership.

27 (2) For purposes of this subdivision, the term “electing
28 1987 partnership” means any publicly traded partnership
29 if all of the following apply:

30 (A) The partnership is an existing partnership (as
31 defined in Section 10211(c)(2) of the Revenue
32 Reconciliation Act of 1987).

33 (B) Section 7704(a) of the Internal Revenue Code has
34 not applied (and without regard to Section 7704(c)(1) of
35 the Internal Revenue Code would not have applied) to
36 that partnership for all prior taxable years beginning after
37 December 31, 1987, and before January 1, 1998.

38 (C) (i) The partnership has made the election under
39 Section 7704(g)(1)(C) of the Internal Revenue Code (as
40 added by Public Law 105-34) for federal tax purposes.

1 (ii) The election for federal tax purposes described in
2 clause (i) shall be treated as a binding election and a
3 separate election for state tax purposes shall not be
4 allowed under paragraph (3) of subdivision (e) of Section
5 23051.5.

6 (iii) The election for federal tax purposes described in
7 clause (i) shall be treated as a binding consent to the
8 application of the tax imposed under paragraph (3) and
9 a separate election for state tax purposes shall not be
10 allowed under paragraph (3) of subdivision (e) of Section
11 23051.5.

12 (D) A partnership which, but for this subparagraph,
13 would be treated as an electing 1987 partnership shall
14 cease to be so treated (and the election under
15 subparagraph (C) shall cease to be in effect) as of the first
16 day after December 31, 1997, that the partnership is no
17 longer treated as an electing 1987 partnership for federal
18 tax purposes (and the election under Section
19 7704(g)(1)(C) of the Internal Revenue Code (as added
20 by Public Law 105-34) ceases to be in effect for federal tax
21 purposes).

22 (3) (A) There is hereby imposed for each taxable year
23 beginning on or after January 1, 1998, on the gross income
24 of each electing 1987 partnership a tax equal to 1 percent
25 of that partnership's gross income from all sources
26 reportable to this state, taking into account Section 25101
27 and any election under Section 25110, attributable to the
28 active conduct of trades and businesses by the
29 partnership.

30 (B) The tax shall be due and payable on the ~~dated~~ date
31 the return of the partnership is required to be filed under
32 Section 18633, shall be collected and refunded in the same
33 manner as other taxes imposed by this part, and shall be
34 subject to interest and applicable penalties.

35 (C) For purposes of this paragraph, ~~in the case of~~ if a
36 partnership ~~which~~ is a partner in another partnership,
37 the gross income referred to in subparagraph (A) shall
38 include the partnership's distributive share of the gross
39 income of the other partnership from all sources
40 reportable to this state, taking into account Section 25101

1 and any election under Section 25110, attributable to the
2 active conduct of trades and businesses of that other
3 partnership. A similar rule shall apply in the case of
4 lower-tiered partnerships.

5 (D) The tax imposed by this paragraph shall be treated
6 as imposed by this part other than for purposes of
7 determining the amount of any credit allowable under
8 this part.

9 (4) The provisions of this subdivision shall apply to the
10 taxable year for which the election described in clause (i)
11 of subparagraph (C) of paragraph (2) is made for federal
12 purposes and all subsequent taxable years unless revoked
13 by the partnership for federal purposes. Any revocation
14 made for federal purposes shall be treated as a binding
15 revocation under this part, but, once so revoked, may not
16 be reinstated and a separate revocation for state purposes
17 shall not be allowed under paragraph (3) of subdivision
18 (e) of Section 23051.5.

19 (c) The amendment made to this section by the act
20 adding this subdivision shall apply to taxable years
21 beginning on or after January 1, 1998.

22 SEC. 179. Section 23610.5 of the Revenue and
23 Taxation Code is amended to read:

24 23610.5. (a) (1) There shall be allowed as a credit
25 against the "tax" (as defined by Section 23036) a state
26 low-income housing tax credit in an amount equal to the
27 amount determined in subdivision (c), computed in
28 accordance with Section 42 of the Internal Revenue Code
29 of 1986, except as otherwise provided in this section.

30 (2) "Taxpayer," for purposes of this section, means the
31 sole owner in the case of a C corporation, the partners in
32 the case of a partnership, and the shareholders in the case
33 of an S corporation.

34 (3) "Housing sponsor," for purposes of this section,
35 means the sole owner in the case of a C corporation, the
36 partnership in the case of a partnership, and the S
37 corporation in the case of an S corporation.

38 (b) (1) The amount of the credit allocated to any
39 housing sponsor shall be authorized by the California Tax
40 Credit Allocation Committee, or any successor thereof,

1 based on a project's need for the credit for economic
2 feasibility in accordance with the requirements of this
3 section.

4 (A) The low-income housing project shall be located
5 in California and shall meet either of the following
6 requirements:

7 (i) The project's housing sponsor ~~shall have~~ *has* been
8 allocated by the California Tax Credit Allocation
9 Committee a credit for federal income tax purposes
10 under Section 42 of the Internal Revenue Code.

11 (ii) It ~~shall qualify~~ *qualifies* for a credit under Section
12 42(h)(4)(B) of the Internal Revenue Code.

13 (B) The California Tax Credit Allocation Committee
14 shall not require fees for the credit under this section in
15 addition to those fees required for applications for the tax
16 credit pursuant to Section 42 of the Internal Revenue
17 Code. The committee may require a fee if the application
18 for the credit under this section is submitted in a calendar
19 year after the year the application is submitted for the
20 federal tax credit.

21 (2) (A) The California Tax Credit Allocation
22 Committee shall certify to the housing sponsor the
23 amount of tax credit under this section allocated to the
24 housing sponsor for each credit period.

25 (B) In the case of a partnership or an S corporation, the
26 housing sponsor shall provide a copy of the California Tax
27 Credit Allocation Committee certification to the
28 taxpayer.

29 (C) The taxpayer shall, upon request, provide a copy
30 of the certification to the Franchise Tax Board.

31 (D) All elections made by the taxpayer pursuant to
32 Section 42 of the Internal Revenue Code shall apply to
33 this section.

34 (E) For buildings located in designated difficult
35 development areas or qualified census tracts as defined in
36 Section 42(d)(5)(C) of the Internal Revenue Code,
37 credits may be allocated under this section in the amounts
38 prescribed in subdivision (c), provided that the amount
39 of credit allocated under Section 42 of the Internal

1 Revenue Code is computed on 100 percent of the
2 qualified basis of the building.

3 (c) Section 42(b) of the Internal Revenue Code shall
4 be modified as follows:

5 (1) In the case of any qualified low-income building
6 placed in service by the housing sponsor during 1987, the
7 term “applicable percentage” means 9 percent for each
8 of the first three years and 3 percent for the fourth year
9 for new buildings (whether or not the building is
10 federally subsidized) and for existing buildings.

11 (2) In the case of any qualified low-income building
12 that receives an allocation after 1989 and is a new building
13 not federally subsidized, the term “applicable
14 percentage” means the following:

15 (A) For each of the first three years, the percentage
16 prescribed by the Secretary of the Treasury for new
17 buildings that are not federally subsidized for the taxable
18 year, determined in accordance with the requirements of
19 Section 42(b)(2) of the Internal Revenue Code, in lieu of
20 the percentage prescribed in Section 42(b)(1)(A).

21 (B) For the fourth year, the difference between 30
22 percent and the sum of the applicable percentages for the
23 first three years.

24 (3) In the case of any qualified low-income building
25 that receives an allocation after 1989 and that is a new
26 building that is federally subsidized or that is an existing
27 building that is “at risk of conversion,” the term
28 “applicable percentage” means the following:

29 (A) For each of the first three years, the percentage
30 prescribed by the Secretary of the Treasury for new
31 buildings that are federally subsidized for the taxable
32 year.

33 (B) For the fourth year, the difference between 13
34 percent and the sum of the applicable percentages for the
35 first three years.

36 (4) For purposes of this section, the term “at risk of
37 conversion,” with respect to an existing building means
38 a building that satisfies all of the following criteria:

39 (A) The building is presently owned by a housing
40 sponsor other than a qualified nonprofit organization.

1 (B) The building is a federally assisted building for
2 which the low-income use restrictions will terminate or
3 the building is eligible for prepayment under Subtitle 13
4 of the Emergency Low Income Housing Assistance Act of
5 1987 or under Section 502(c) of the Housing Act of 1949,
6 anytime in the two calendar years after the year of
7 application to the California Tax Credit Allocation
8 Committee, and the purchaser has received preliminary
9 approval from the applicable federal agency for a
10 maximum level of incentives through a plan of action.

11 (C) The person acquiring the building enters into a
12 regulatory agreement that requires the building to be
13 operated in accordance with the requirements of this
14 section for a period equal to the greater of 55 years or the
15 life of the building.

16 (D) The building satisfies the requirements of Section
17 42(e) of the Internal Revenue Code regarding
18 rehabilitation expenditures, except that the provisions of
19 Section 42(e)(3)(A)(ii)(I) shall not apply.

20 (d) The term “qualified low-income housing project”
21 as defined in Section 42(c)(2) of the Internal Revenue
22 Code is modified by adding the following requirements:

23 (1) The taxpayer shall be entitled to receive a cash
24 distribution from the operations of the project, after
25 funding required reserves, which, at the election of the
26 taxpayer, *is shall be* equal to:

27 (A) An amount not to exceed 8 percent of the lesser of:

28 (i) The owner equity—~~that~~, *which* shall include the
29 amount of the capital contributions actually paid to the
30 housing sponsor and shall not include any amounts until
31 they are paid on an investor note; or

32 (ii) Twenty percent of the adjusted basis of the
33 building as of the close of the first income year of the
34 credit period; or

35 (B) The amount of the cash-flow from those units in
36 the building that are not low-income units. For purposes
37 of computing cash-flow under this subparagraph,
38 operating costs shall be allocated to the low-income units
39 using the “floor space fraction,” as defined in Section 42
40 of the Internal Revenue Code.

(C) Any amount allowed to be distributed under subparagraph (A) that is not available for distribution during the first five years of the compliance period may accumulate and be distributed *at* any time during the first 15 years of the compliance period but not thereafter.

(2) The limitation on return shall apply in the aggregate to the partners if the housing sponsor is a partnership and in the aggregate to the shareholders if the housing sponsor is an S corporation.

(3) The housing sponsor shall apply any cash available for distribution in excess of the amount eligible to be distributed under paragraph (1) to reduce the rent on rent-restricted units or to increase the number of rent-restricted units subject to the tests of Section 42(g)(1) of the Internal Revenue Code.

(e) The provisions of Section 42(f) of the Internal Revenue Code shall be modified as follows:

(1) The term “credit period” as defined in Section 42(f)(1) of the Internal Revenue Code is modified by substituting “four income years” for “10 taxable years.”

(2) The special rule for the first taxable year of the credit period under Section 42(f)(2) of the Internal Revenue Code shall not apply to the tax credit under this section.

(3) Section 42(f)(3) of the Internal Revenue Code is modified to read:

If, as of the close of any income year in the compliance period, after the first year of the credit period, the qualified basis of any building exceeds the qualified basis of that building as of the close of the first year of the credit period, the housing sponsor, to the extent of its tax credit allocation, shall be eligible for a credit on the excess in an amount equal to the applicable percentage determined pursuant to subdivision (c) for the four-year period beginning with the later of the income years in which the increase in qualified basis occurs.

(f) The provisions of Section 42(h) of the Internal Revenue Code shall be modified as follows:

1 (1) Section 42(h)(2) of the Internal Revenue Code
2 shall not be applicable and instead the following
3 provisions shall be applicable:

4 The total amount for the four-year credit period of the
5 housing credit dollars allocated in a calendar year to any
6 building shall reduce the aggregate housing credit dollar
7 amount of the California Tax Credit Allocation
8 Committee for the calendar year in which the allocation
9 is made.

10 (2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F),
11 (6)(G), (6)(I), (7), and (8) of Section 42(h) of the
12 Internal Revenue Code shall not be applicable.

13 (g) The aggregate housing credit dollar amount ~~which~~
14 *that* may be allocated annually by the California Tax
15 Credit Allocation Committee pursuant to this section,
16 Section 12206, and Section 17058 shall be an amount equal
17 to the sum of the following:

18 (1) (A) Except as provided in subparagraph (B),
19 thirty-five million dollars (\$35,000,000) for the 1997
20 calendar year, and each calendar year thereafter, *or*

21 (B) Fifty million dollars (\$50,000,000) for each of the
22 calendar years 1998 and 1999; *and*

23 (2) The unused housing credit ceiling, if any, for the
24 preceding calendar years; and

25 (3) The amount of housing credit ceiling returned in
26 the calendar year. For purposes of this paragraph, the
27 amount of housing credit dollar amount returned in the
28 calendar year equals the housing credit dollar amount
29 previously allocated to any project that does not become
30 a qualified low-income housing project within the period
31 required by this section or to any project with respect to
32 which an allocation is canceled by mutual consent of the
33 California Tax Credit Allocation Committee and the
34 allocation recipient.

35 (h) The term “compliance period” as defined in
36 Section 42(i)(1) of the Internal Revenue Code is
37 modified to mean, with respect to any building, the
38 period of ~~30 consecutive~~ *30 consecutive* income years
39 beginning with the first income year of the credit period
40 with respect thereto.

(i) Section 42(j) of the Internal Revenue Code shall not be applicable and the following shall be substituted in its place:

~~(1) The~~

The requirements of this section shall be set forth in a regulatory agreement between the California Tax Credit Allocation Committee and the housing sponsor, and this agreement shall be subordinated, when required, to any lien or encumbrance of any banks or other institutional lenders to the project. The regulatory agreement entered into pursuant to subdivision (f) of Section 50199.14 of the Health and Safety Code, shall apply, ~~providing~~ *provided* that the agreement includes all of the following provisions:

~~(A)~~

(1) A term not less than the compliance period.

~~(B)~~

(2) A requirement that the agreement be filed in the official records of the county in which the qualified low-income housing project is located.

~~(C)~~

(3) A provision stating which state and local agencies can enforce the regulatory agreement in the event the housing sponsor fails to satisfy any of the requirements of this section.

~~(D)~~

(4) A provision that the regulatory agreement shall be deemed a contract enforceable by tenants as third-party beneficiaries thereto, and ~~which~~ *that* allows individuals, whether prospective, present, or former occupants of the building, who meet the income limitation applicable to the building, the right to enforce the regulatory agreement in any state court.

~~(E)~~

(5) A provision incorporating the requirements of Section 42 of the Internal Revenue Code as modified by this section.

~~(F)~~

(6) A requirement that the housing sponsor notify the California Tax Credit Allocation Committee or its

1 designee if there is a determination by the Internal
2 Revenue Service that the project is not in compliance
3 with Section 42(g) of the Internal Revenue Code.

4 ~~(G)~~

5 (7) A requirement that the housing sponsor, as
6 security for the performance of the housing sponsor's
7 obligations under the regulatory agreement, assign the
8 housing sponsor's interest in rents that it receives from
9 the project, provided that until there is a default under
10 the regulatory agreement, the housing sponsor is entitled
11 to collect and retain the rents.

12 ~~(H) The~~

13 (8) *A provision that the* remedies available in the
14 event of a default under the regulatory agreement that
15 is not cured within a reasonable cure period; include, but
16 are not limited to, allowing any of the parties designated
17 to enforce the regulatory agreement to collect all rents
18 with respect to the project; taking possession of the
19 project and operating the project in accordance with the
20 regulatory agreement until the enforcer determines the
21 housing sponsor is in a position to operate the project in
22 accordance with the regulatory agreement; applying to
23 any court for specific performance; securing the
24 appointment of a receiver to operate the project; or any
25 other relief as may be appropriate.

26 (j) (1) The committee shall allocate the housing
27 credit on a regular basis consisting of two or more periods
28 in each calendar year during which applications may be
29 filed and considered. The committee shall establish
30 application filing deadlines, the maximum percentage of
31 federal and state low-income housing tax credit ceiling
32 that may be allocated by the committee in that period,
33 and the approximate date on which allocations shall be
34 made. If the enactment of federal or state law, the
35 adoption of rules or regulations, or other similar events
36 prevent the use of two allocation periods, the committee
37 may reduce the number of periods and adjust the filing
38 deadlines, maximum percentage of credit allocated, and
39 ~~the~~ allocation dates.

(2) The committee shall adopt a qualified allocation plan, as provided in Section 42(m)(1) of the Internal Revenue Code. In adopting this plan, the committee shall comply with the provisions of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue Code.

(3) Notwithstanding Section 42(m) of the Internal Revenue Code, the California Tax Credit Allocation Committee shall allocate housing credits in accordance with the qualified allocation plan and regulations, which shall include the following provisions:

(A) All housing sponsors, as defined by paragraph (3) of subdivision (a), shall demonstrate at the time the application is filed with the committee that the project meets the following threshold requirements:

(i) The housing sponsor shall demonstrate *that* there is a need for low-income housing in the community or region for which it is proposed.

(ii) The project's proposed financing, including tax credit proceeds, shall be sufficient to complete the project and shall be adequate to operate the project for the extended use period.

(iii) The project shall have enforceable financing commitments, either construction or permanent financing, for at least 50 percent of the total estimated financing of the project.

(iv) The housing sponsor shall have and maintain control of the site for the project.

(v) The housing sponsor shall demonstrate that the project complies with all applicable local land use and zoning ordinances.

(vi) The housing sponsor shall demonstrate that the project development team has the experience and the financial capacity to ensure project completion and operation for the extended use period.

(vii) The housing sponsor shall demonstrate the amount of tax credit that is necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the extended use period, taking into account operating expenses, a supportable debt service, reserves, funds set aside for

1 rental subsidies, and required equity, and a development
2 fee that does not exceed a specified percentage of the
3 eligible basis of the project prior to inclusion of the
4 development fee in the eligible basis, as determined by
5 the committee.

6 (B) The committee shall give a preference to those
7 projects satisfying all of the threshold requirements of
8 subparagraph (A) if:

9 (i) The project serves the lowest income tenants at
10 rents affordable to those tenants; and

11 (ii) The project is obligated to serve qualified tenants
12 for the longest period.

13 (C) In addition to the provisions of subparagraphs (A)
14 and (B), the committee shall use the following criteria in
15 allocating housing credits:

16 (i) Projects serving large families in which a
17 substantial number, as defined by the committee, of all
18 residential units ~~is comprised of~~ *are* low-income units
19 with three and more bedrooms.

20 (ii) Projects providing ~~single-room~~ *single-room*
21 occupancy units serving very low income tenants.

22 (iii) Existing projects that are “at risk of conversion,”
23 as defined by paragraph (4) of subdivision (c).

24 (iv) Projects for which a public agency provides direct
25 or indirect long-term financial support for at least 15
26 percent of the total project development costs or projects
27 for which the owner’s equity constitutes at least 30
28 percent of the total project development costs.

29 (v) Projects that provide tenant amenities not
30 generally available to residents of low-income housing
31 projects.

32 (4) For purposes of allocating credits pursuant to this
33 section, the committee shall not give preference to any
34 project by virtue of the date of submission of its
35 application except to break a tie when two or more of the
36 projects have an equal rating.

37 (5) Not less than 20 percent of the low-income housing
38 tax credits available annually under this section, Section
39 12206, and Section 17058 shall be set aside for allocation
40 to rural areas as defined in Section 50199.21 of the Health

1 and Safety Code. Any amount of credit set aside for rural
2 areas remaining on or after October 31 of any calendar
3 year shall be available for allocation to any eligible
4 project. No amount of credit set aside for rural areas shall
5 be considered available for any eligible project so long as
6 there are eligible rural applications pending on October
7 31.

8 (k) Section 42(l) of the Internal Revenue Code shall
9 be modified as follows:

10 The term “secretary” shall be replaced by the term
11 “California Franchise Tax Board.”

12 (l) In the case where the state credit allowed under
13 this section exceeds the “tax,” the excess may be carried
14 over to reduce the “tax” in the following year, and
15 succeeding years if necessary, until the credit has been
16 exhausted.

17 (m) A project that received an allocation of a 1989
18 federal housing credit dollar amount shall be eligible to
19 receive an allocation of a 1990 state housing credit dollar
20 amount, subject to all of the following conditions:

21 (1) The project was not placed in service prior to 1990.

22 (2) To the extent the amendments made to this section
23 by the Statutes of 1990 conflict with any provisions
24 existing in this section prior to those amendments, the
25 prior provisions of law shall prevail.

26 (3) Notwithstanding paragraph (2), a project
27 applying for an allocation under this subdivision shall be
28 subject to the requirements of paragraph (3) of
29 subdivision (j).

30 (n) The credit period with respect to an allocation of
31 credit in 1989 by the California Tax Credit Allocation
32 Committee of which any amount is attributable to
33 unallocated credit from 1987 or 1988 shall not begin until
34 after December 31, 1989.

35 (o) The provisions of Section 11407(a) of Public Law
36 101-508, relating to the effective date of the extension of
37 the low-income housing credit, shall apply to calendar
38 years after 1989.

1 (p) The provisions of Section 11407(c) of Public Law
2 101-508, relating to election to accelerate credit, shall not
3 apply.

4 (q) (1) A corporation may elect to assign any portion
5 of any credit allowed under this section to one or more
6 affiliated corporations for each income year in which the
7 credit is allowed. For purposes of this subdivision,
8 “affiliated corporation” has the meaning provided in
9 subdivision (b) of Section 25110, as that section was
10 amended by Chapter 881 of the Statutes of 1993, as of the
11 last day of the income year in which the credit is allowed,
12 except that “100 percent” is substituted for “more than 50
13 percent” wherever it appears in the section, as that
14 section was amended by Chapter 881 of the Statutes of
15 1993, and “voting common stock” is substituted for
16 “voting stock” wherever it appears in the section, as that
17 section was amended by Chapter 881 of the Statutes of
18 1993.

19 (2) The election provided in paragraph (1):

20 (A) May be based on any method selected by the
21 corporation that originally receives the credit.

22 (B) Shall be irrevocable for the income year the credit
23 is allowed, once made.

24 (C) May be changed for any subsequent income year
25 if the election to make the assignment is expressly shown
26 on each of the returns of the affiliated corporations that
27 assign and receive the credits.

28 (r) Any unused credit may continue to be carried
29 forward, as provided in subdivision (k), until the credit
30 has been exhausted.

31 This section shall remain in effect on or after December
32 1, 1990, for as long as Section 42 of the Internal Revenue
33 Code, pertaining to low-income housing credits, remains
34 in effect.

35 (s) The amendments to this section made by the act
36 adding this subdivision shall apply only to income years
37 beginning on or after January 1, 1994, except that
38 paragraph (1) of subdivision (q), as amended, shall apply
39 to income years beginning on or after January 1, 1993.

SEC. 180. Section 23701t of the Revenue and Taxation Code is amended to read:

23701t. (a) A homeowners' association organized and operated to provide for the acquisition, construction, management, maintenance, and care of residential association property if all of the following apply:

(1) Sixty percent or more of the gross income of ~~such~~ *the* organization for the taxable year consists solely of amounts received as membership dues, fees, and assessments from either of the following:

(A) Tenant-stockholders or owners of residential units, residences, or lots.

(B) Owners of timeshare rights to use, or timeshare ownership interests in, association property in the case of a timeshare association.

(2) Ninety percent or more of the expenditures of the organization for the taxable year are expenditures for the acquisition, construction, management, maintenance, and care of association property and, in the case of a timeshare association, for activities provided to or on behalf of members of the association.

(3) No part of the net earnings inures (other than by providing management, maintenance, and care of association property or by a rebate of excess membership dues, fees, or assessments) to the benefit of any private shareholder or individual.

(4) Amounts received as membership dues, fees, and assessments not expended for association purposes during the taxable year are transferred to and held in trust to provide for the management, maintenance, and care of association property and common areas.

(b) The term "association property" means—:

(1) Property held by the organization;

(2) Property held in common by the members of the organization; ~~and~~.

(3) Property within the organization privately held by the members of the organization.

In the case of a timeshare association, "association property" includes property in which the timeshare association, or members of the association, have rights

1 arising out of recorded easements, covenants, or other
2 recorded instruments to use property related to the
3 timeshare project.

4 (c) A homeowners' association shall be subject to tax
5 under this part with respect to its "homeowners'
6 association taxable income," and ~~such~~ *that* income shall
7 be subject to tax as provided by Chapter 3 (commencing
8 with Section 23501) of this part.

9 (1) For purposes of this section, the term
10 "homeowners' association taxable income" of any
11 organization for any taxable year means an amount equal
12 to the excess over one hundred dollars (\$100) (if any)
13 of—

14 (A) The gross income for the taxable year (excluding
15 any exempt function income), over

16 (B) The deductions allowed by this part which are
17 directly connected with the production of the gross
18 income (excluding exempt function income).

19 (2) For purposes of this section, the term "exempt
20 function income" means any amount received as
21 membership fees, dues, and assessments from
22 tenant-shareholders or owners of residential units,
23 residences, or lots, or owners of timeshare rights to use,
24 or timeshare ownership interests in, association property
25 in the case of a timeshare association.

26 (d) The term "homeowners' association" includes a
27 condominium management association, a residential real
28 estate management association, a timeshare association,
29 and a cooperative housing corporation.

30 (e) "Cooperative housing corporation" includes, but is
31 not limited to, a limited-equity housing cooperative, as
32 defined in Section 33007.5 of the Health and Safety Code,
33 organized either as a nonprofit public benefit corporation
34 pursuant to Part 2 (commencing with Section 5110) of
35 Division 2 of Title 1 of the Corporations Code, or a
36 nonprofit mutual benefit corporation pursuant to Part 3
37 (commencing with Section 7110) of Division 2 of Title 1
38 of the Corporations Code.

39 (f) The term "timeshare association" means any
40 organization (other than a condominium management

1 association) organized and operated to provide for the
2 acquisition, construction, management, maintenance,
3 and care of association property if any member thereof
4 holds a timeshare right to use, or a timeshare ownership
5 interest in, real property constituting association
6 property.

7 (g) The amendments made to this section by the act
8 adding this subdivision shall apply to taxable years
9 beginning on or after January 1, 1998.

10 SEC. 181. Section 23704 of the Revenue and Taxation
11 Code is amended to read:

12 23704. For purposes of this part, an organization shall
13 be treated as an organization organized and operated
14 exclusively for charitable purposes, if:

15 (a) The organization is organized and operated solely:

16 (1) To perform, on a centralized basis, one or more of
17 the following services which, if performed on its own
18 behalf by a hospital ~~which~~ *that* is an organization
19 described in Section 23701d and exempt from taxation
20 under Section 23701, would constitute activities in
21 exercising or performing the purpose or function
22 constituting the basis for its exemption: data processing,
23 purchasing (including the purchasing of insurance on a
24 group basis), warehousing, billing and collection
25 (including the purchase of patron accounts receivable on
26 a recourse basis), food, clinical, industrial engineering,
27 laboratory, laundry, printing, communications, record
28 center, and personnel (including selection, testing,
29 training, and education of personnel) services; and

30 (2) To perform ~~such~~ *those* services solely for two or
31 more hospitals, and for no other individuals or
32 organizations, each of which is:

33 (A) An organization described in Section 23701d
34 ~~which~~ *that* is exempt from taxation under Section 23701,
35 or

36 (B) A constituent part of an organization described in
37 Section 23701d—~~which~~ *that* is exempt from taxation under
38 Section 23701 and ~~which~~ *that*, if organized and operated
39 as a separate entity, would constitute an organization
40 described in Section 23701d, or

1 (C) Owned and operated by the United States, the
2 state, a county, or political subdivision, or an agency or
3 instrumentality of any of the foregoing.

4 (b) The organization is organized and operated on a
5 cooperative basis and allocates or pays, within 8½
6 months after the close of its income year, all net earnings
7 to members on the basis of services performed for them;
8 ~~and~~.

9 (c) If the organization has capital stock, all of that stock
10 outstanding is owned by its members.

11 For purposes of this part, any organization ~~which~~ *that*,
12 by reason of the preceding sentence, is an organization
13 described in Section 23701d and exempt from taxation
14 under Section 23701, shall be treated as a hospital and as
15 an organization referred to in Section 23736(e).

16 SEC. 182. Section 24416.2 of the Revenue and
17 Taxation Code is amended to read:

18 24416.2. (a) The term “qualified taxpayer” as used in
19 Section 24416.1 ~~includes~~ *includes* a corporation engaged
20 in the conduct of a trade or business within an enterprise
21 zone designated pursuant to Chapter 12.8 (commencing
22 with Section 7070) of Division 7 of Title 1 of the
23 Government Code. For purposes of this subdivision, all of
24 the following shall apply:

25 (1) A net operating loss shall not be a net operating loss
26 carryback for any income year and a net operating loss for
27 any income year beginning on or after the date that the
28 area in which the taxpayer conducts a trade or business
29 is designated as an enterprise zone shall be a net
30 operating loss carryover to each of the 15 income years
31 following the income year of loss.

32 (2) For purposes of this subdivision:

33 (A) “Net operating loss” means the loss determined
34 under Section 172 of the Internal Revenue Code, as
35 modified by Section 24416.1, attributable to the taxpayer’s
36 business activities within the enterprise zone (as defined
37 in Chapter 12.8 (commencing with Section 7070) of
38 Division 7 of Title 1 of the Government Code) prior to the
39 enterprise zone expiration date. That attributable loss
40 shall be determined in accordance with Chapter 17

(commencing with Section 25101), modified for purposes of this subdivision as follows:

(i) Loss shall be apportioned to the enterprise zone by multiplying total loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is ~~two~~ 2.

(ii) “The enterprise zone” shall be substituted for “this state.”

(B) A net operating loss carryover shall be a deduction only with respect to the taxpayer’s business income attributable to the enterprise zone as defined in Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(C) Attributable income is that portion of the taxpayer’s California source business income that is apportioned to the enterprise zone. For that purpose, the taxpayer’s business income attributable to sources in this state first shall be determined in accordance with Chapter 17 (commencing with Section 25101). That business income shall be further apportioned to the enterprise zone in accordance with Article 2 (commencing with Section 25120) of Chapter 17, modified for purposes of this subdivision as follows:

(i) Business income shall be apportioned to the enterprise zone by multiplying the total California business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is ~~two~~ 2. For purposes of this clause:

(I) The property factor is a fraction, the numerator of which is the average value of the taxpayer’s real and tangible personal property owned or rented and used in the enterprise zone during the income year, and the denominator of which is the average value of all the taxpayer’s real and tangible personal property owned or rented and used in this state during the income year.

(II) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the enterprise zone during the income year for compensation, and the denominator of which is the total

1 compensation paid by the taxpayer in this state during the
2 income year.

3 (ii) If a loss carryover is allowable pursuant to this
4 section for any income year after the enterprise zone
5 designation has expired, the enterprise zone shall be
6 deemed to remain in existence for purposes of computing
7 the limitation set forth in subparagraph (B) and allowing
8 a net operating loss deduction.

9 (D) “Enterprise zone expiration date” means the date
10 the enterprise zone designation expires, is no longer
11 binding, or becomes inoperative.

12 (3) The changes made to this subdivision by the act
13 adding this paragraph shall apply to income years
14 beginning on or after January 1, 1998.

15 (b) A taxpayer who qualifies as a “qualified taxpayer”
16 under one or more sections shall, for the income year of
17 the net operating loss and any income year to which that
18 net operating loss may be carried, designate on the
19 original return filed for each year the section ~~which~~ *that*
20 applies to that taxpayer with respect to that net operating
21 loss. If the taxpayer is eligible to qualify under more than
22 one section, the designation is to be made after taking into
23 account subdivision (c).

24 (c) If a taxpayer is eligible to qualify under this section
25 and either Section 24416.4, 24416.5, or 24416.6 as a
26 “qualified taxpayer,” with respect to a net operating loss
27 in an income year, the taxpayer shall designate which
28 section is to apply to the taxpayer.

29 (d) Notwithstanding Section 24416, the amount of the
30 loss determined under this section shall be the only net
31 operating loss allowed to be carried over from that
32 income year, and the designation under subdivision (b)
33 shall be included in the election under Section 24416.1.

34 SEC. 183. Section 41136 of the Revenue and Taxation
35 Code is amended to read:

36 41136. Funds in the State Emergency Telephone
37 Number Account shall, when appropriated by the
38 Legislature, be spent solely for the following purposes:

39 (a) To pay refunds authorized by this part.



1 (b) To pay the State Board of Equalization for the cost
2 of the administration of this part.

3 (c) To pay the Department of General Services for its
4 costs in administration of the “911” emergency telephone
5 number system.

6 (d) To pay bills submitted to the Department of
7 General Services by service suppliers or communications
8 equipment companies for the installation *of*, and ongoing
9 expenses for, the following communications services
10 supplied *to* local agencies in connection with the “911”
11 emergency phone number system:

12 (1) A basic system.

13 (2) A basic system with telephone central office
14 identification.

15 (3) A system employing automatic call routing.

16 (4) Approved incremental costs.

17 (e) To pay claims of local agencies for approved
18 incremental costs, not previously compensated for by
19 another governmental agency.

20 (f) To pay claims of local agencies for incremental
21 costs and amounts, not previously compensated for by
22 another governmental agency, incurred prior to the
23 effective date of this part, for the installation and ongoing
24 expenses for the following communication services
25 supplied in connection with the “911” emergency phone
26 number system:

27 (1) A basic system.

28 (2) A basic system with telephone central office
29 identification.

30 (3) A system employing automatic call routing.

31 (4) Approved incremental costs. Incremental costs
32 shall not be allowed unless the costs are concurred in by
33 the ~~Communications~~ Division *of Telecommunications of*
34 *the Department of General Services*.

35 (g) To pay the Division of Telecommunications of the
36 Department of General Services for the costs associated
37 with the pilot program authorized by Article 6.5
38 (commencing with Section 53125) of Chapter 1 of Part 1
39 of Division 2 of Title 5 of the Government Code.

1 SEC. 184. Section 65004 of the Revenue and Taxation
2 Code is amended to read:

3 65004. (a) Except as provided in subdivision (b), no
4 city, county, or city and county may impose, assess, or
5 attempt to collect any of the following:

6 (1) A tax on Internet access, Online Computer
7 Services, or the use of Internet access or any Online
8 Computer Services.

9 (2) A bit tax or bandwidth tax.

10 (3) Any discriminatory tax on Online Computer
11 Services or Internet access.

12 (b) The prohibition in subdivision (a) against the
13 imposition of taxes shall not apply to any new or existing
14 tax of general application, including, but not limited to,
15 any sales and use tax, business license tax, or utility user
16 tax that is imposed or assessed in a uniform and
17 nondiscriminatory manner without regard to whether
18 the activities or transactions taxed are conducted through
19 the use of the Internet, Internet access, or Online
20 Computer Services.

21 (c) A cable television franchise fee may not be
22 imposed on Online Computer Services or Internet access
23 delivered over a cable television system; if the Federal
24 Communications Commission, by *issuing* final order, or a
25 court of competent jurisdiction, by rendering a judgment
26 enforceable in California, finds that those are not cable
27 services; as defined in Section 522(6) of Title 47 of the
28 United States Code and are, therefore, not subject to a
29 franchise fee. However, if that final order or judgment is
30 overturned or modified by further administrative,
31 legislative, or judicial action, that action shall control. The
32 operation of this subdivision may be suspended by
33 contract between a cable television franchising authority
34 and a cable television operator.

35 (d) This part shall become inoperative three years
36 from the effective date of the act adding this part.

37 SEC. 185. Section 1095 of the Unemployment
38 Insurance Code is amended to read:

39 1095. The director shall permit the use of any
40 information in his or her possession to the extent

1 necessary for any of the following purposes and may
2 require reimbursement for all direct costs incurred in
3 providing any and all information specified in this section,
4 except information specified in subdivisions (a) to (e),
5 inclusive:

6 (a) To enable the director or his or her representative
7 to carry out his or her responsibilities under this code.

8 (b) To properly present a claim for benefits.

9 (c) To acquaint a worker or his or her authorized
10 agent with his or her existing or prospective right to
11 benefits.

12 (d) To furnish an employer or his or her authorized
13 agent with information to enable him or her to fully
14 discharge his or her obligations or safeguard his or her
15 rights under this division or Division 3 (commencing with
16 Section 9000).

17 (e) To enable an employer to receive a reduction in
18 contribution rate.

19 (f) To enable federal, state, or local government
20 departments or agencies, subject to federal law, to verify
21 or determine the eligibility or entitlement of an applicant
22 for, or a recipient of, public social services provided
23 pursuant to Division 9 (commencing with Section 10000)
24 of the Welfare and Institutions Code, or Part A of Title IV
25 of *the* Social Security Act, where the verification or
26 determination is directly connected with, and limited to,
27 the administration of public social services.

28 (g) To enable county administrators of general relief
29 or assistance, or their representatives, to determine
30 entitlement to locally provided general relief or
31 assistance, where the determination is directly connected
32 with, and limited to, the administration of general relief
33 or assistance.

34 (h) To enable state or local governmental
35 departments or agencies to seek criminal, civil, or
36 administrative remedies in connection with the unlawful
37 application for, or receipt of, relief provided under
38 Division 9 (commencing with Section 10000) of the
39 Welfare and Institutions Code or to enable the collection
40 of expenditures for medical assistance services pursuant

1 to Part 5 (commencing with Section 17000) of Division 9
2 of the Welfare and Institutions Code.

3 (i) To provide any law enforcement agency with the
4 name, address, telephone number, birth date, social
5 security number, physical description, and names and
6 addresses of present and past employers, of any victim,
7 suspect, missing person, potential witness, or person for
8 whom a felony arrest warrant has been issued, when a
9 request for this information is made by any investigator
10 or peace officer as defined by Sections 830.1 and 830.2 of
11 the Penal Code, or by any federal law enforcement officer
12 to whom the Attorney General has delegated authority to
13 enforce federal search warrants, as defined under
14 Sections 60.2 and 60.3 of Title 28 of the Code of Federal
15 Regulations, as amended, and when the requesting
16 officer has been designated by the head of the law
17 enforcement agency and requests this information in the
18 course of and as a part of an investigation into the
19 commission of a crime ~~where~~ *when* there is a reasonable
20 suspicion that the crime is a felony and that the
21 information would lead to relevant evidence. The
22 information provided pursuant to this subdivision shall be
23 provided to the extent permitted by federal law and
24 regulations, and to the extent the information is available
25 and accessible within the constraints and configurations
26 of existing department records. Any person who receives
27 any information under this subdivision shall make a
28 written report of the information to the law enforcement
29 agency that employs him or her, for filing under the
30 normal procedures of that agency.

31 (1) This subdivision shall not be construed to authorize
32 the release *to any law enforcement agency* of a general
33 list identifying individuals applying for or receiving
34 ~~benefits to any law enforcement agency.~~

35 (2) The department shall maintain records pursuant
36 to this subdivision only for periods required under
37 regulations or statutes enacted for the administration of
38 its programs.

39 (3) This subdivision shall not be construed as limiting
40 the information provided to law enforcement agencies to

1 that pertaining only to applicants for, or recipients of,
2 benefits.

3 (4) The department shall notify all applicants for
4 benefits that release of confidential information from
5 their records will not be protected should there be a
6 felony arrest warrant issued against the applicant or in the
7 event of an investigation by a law enforcement agency
8 into the commission of a felony.

9 ~~(j) Nothing in this section shall be construed to~~
10 ~~authorize or permit the use of information obtained in the~~
11 ~~administration of this code by any private collection~~
12 ~~agency.~~

13 ~~(k)~~ To provide public employee retirement systems in
14 California with information relating to the earnings of
15 any person who has applied for or is receiving a disability
16 income, disability allowance, or disability retirement
17 allowance, from a public employee retirement system.
18 The earnings information shall be released only upon
19 written request from the governing board specifying that
20 the person has applied for or is receiving a disability
21 allowance or disability retirement allowance from its
22 retirement system. The request may be made by the chief
23 executive officer of the system or by an employee of the
24 system so authorized and identified by name and title by
25 the chief executive officer in writing.

26 ~~(l)~~

27 (k) To enable the Division of Labor Standards
28 Enforcement in the Department of Industrial Relations
29 to seek criminal, civil, or administrative remedies in
30 connection with the failure to pay, or the unlawful
31 payment of, wages pursuant to Chapter 1 (commencing
32 with Section 200) of Part 1 of Division 2 of, and Chapter
33 1 (commencing with Section 1720) of Part 7 of Division
34 2 of, the Labor Code.

35 ~~(m)~~

36 (l) To enable federal, state, or local governmental
37 departments or agencies to administer child support
38 enforcement programs under Title IV of the Social
39 Security Act (42 U.S.C. Sec. 651 et seq.).

40 ~~(n)~~

1 (m) To provide federal, state, or local governmental
2 departments or agencies with wage and claim
3 information in its possession that will assist those
4 departments and agencies in the administration of the
5 victims of crime program or in the location of victims of
6 crime who, by state mandate or court order, are entitled
7 to restitution that has been or can be recovered.

8 ~~(p)~~

9 (n) To provide federal, state, or local governmental
10 departments or agencies with information concerning
11 any individuals who are or have been:

12 (1) Directed by state mandate or court order to pay
13 restitution, fines, penalties, assessments, or fees as a result
14 of a violation of law.

15 (2) Delinquent or in default on guaranteed student
16 loans or who owe repayment of funds received through
17 other financial assistance programs administered by
18 those agencies. The information released by the director
19 for the purposes of this paragraph shall not include
20 unemployment insurance benefit information.

21 ~~(p)~~

22 (o) To provide an authorized governmental agency
23 with any or all relevant information that relates to any
24 specific workers' compensation insurance fraud
25 investigation. The information shall be provided to the
26 extent permitted by federal law and regulations. For the
27 purposes of this subdivision, "authorized governmental
28 agency" means the district attorney of any county, the
29 office of the Attorney General, the Department of
30 Industrial Relations, and the Department of Insurance.
31 An authorized governmental agency may disclose this
32 information to the State Bar, the Medical Board of
33 California, or any other licensing board or department
34 whose licensee is the subject of a workers' compensation
35 insurance fraud investigation. This subdivision shall not
36 prevent any authorized governmental agency from
37 reporting to any board or department the suspected
38 misconduct of any licensee of that body.

39 ~~(q)~~

1 (p) To enable the Director of the Bureau for Private
2 Postsecondary and Vocational Education, or his or her
3 representatives, to access unemployment insurance
4 quarterly wage data on a case-by-case basis to verify
5 information on school administrators, school staff, and
6 students provided by those schools who are being
7 investigated for possible violations of Chapter 7
8 (commencing with Section 94700) of Part 59 of the
9 Education Code.

10 ~~(+)~~

11 (q) To provide employment tax information to the tax
12 officials of Mexico, if a reciprocal agreement exists. For
13 purposes of this subdivision, “reciprocal agreement”
14 means a formal agreement to exchange information
15 between national taxing officials of Mexico and taxing
16 authorities of the State Board of Equalization, the
17 Franchise Tax Board, and the Employment
18 Development Department. Furthermore, the reciprocal
19 agreement shall be limited to the exchange of
20 information ~~which~~ *that* is essential for tax administration
21 purposes only. Taxing authorities of the State of California
22 shall be granted tax information only on California
23 residents. Taxing authorities of Mexico shall be granted
24 tax information only on Mexican nationals.

25 ~~(s)~~

26 (r) To enable city and county planning agencies to
27 develop economic forecasts for planning purposes. The
28 information shall be limited to businesses within the
29 jurisdiction of the city or county whose planning agency
30 is requesting the information, and shall not include
31 information regarding individual employees.

32 ~~(+)~~

33 (s) To provide the State Department of
34 Developmental Services with wage and employer
35 information that will assist in the collection of moneys
36 owed by the recipient, parent, or any other legally liable
37 individual for services and supports provided pursuant to
38 Chapter 9 (commencing with Section 4775) of Division
39 4.5 of, and Chapter 2 (commencing with Section 7200)

1 and Chapter 3 (commencing with Section 7500) of
2 Division 7 of, the Welfare and Institutions Code.

3 ~~(tt)~~

4 *(t) Nothing in this section shall be construed to*
5 *authorize or permit the use of information obtained in the*
6 *administration of this code by any private collection*
7 *agency.*

8 *(u) The disclosure of the name and address of an*
9 *individual or business entity that was issued an assessment*
10 *that included penalties under Section 1128 or 1128.1 shall*
11 *not be in violation of Section 1094 if the assessment is final.*
12 *The disclosure may also include any of the following:*

13 *(1) The total amount of the assessment.*

14 *(2) The amount of the penalty imposed under Section*
15 *1128 or 1128.1 that is included in the assessment.*

16 *(3) The facts that resulted in the charging of the*
17 *penalty under Section 1128 or 1128.1.*

18 SEC. 186. Section 2478 of the Vehicle Code is
19 amended to read:

20 2478. (a) Any person who is found guilty of violating
21 Section 2470, 2472, 2474, or 2476, or the rules and
22 regulations promulgated under those provisions, is
23 subject to imprisonment in the county jail for not more
24 than one year, or a fine of not more than one thousand
25 dollars (\$1,000), or both that imprisonment and fine.

26 (b) If the conviction is a second or subsequent
27 conviction of a violation described in subdivision (a), or
28 the violation is committed with intent to defraud or
29 mislead, the person ~~shall be~~ *is* subject to imprisonment in
30 the state prison, or a fine of not more than ten thousand
31 dollars (\$10,000), or both that imprisonment and fine.

32 SEC. 187. Section 2810 of the Vehicle Code is
33 amended to read:

34 2810. (a) A member of the California Highway Patrol
35 may stop any vehicle transporting any timber products,
36 livestock, poultry, farm produce, crude oil, petroleum
37 products, or inedible kitchen grease, and inspect the bills
38 of lading, shipping, *or* delivery papers, or other evidence
39 to determine whether the driver is in legal possession of
40 the load, and, upon reasonable belief that the driver of

1 ~~such~~ the vehicle is not in legal possession, shall take
2 custody of the vehicle and load and turn ~~the same~~ them
3 over ~~into~~ to the custody of the sheriff of the county
4 ~~wherein~~ in which the timber products, livestock, poultry,
5 farm produce, crude oil, petroleum products, or inedible
6 kitchen grease, or any part thereof, is apprehended.

7 (b) The sheriff shall receive and provide for the care
8 and safekeeping of ~~such~~ the apprehended timber
9 products, livestock, poultry, farm produce, crude oil,
10 petroleum products, or inedible kitchen grease, or any
11 part thereof, and immediately, in cooperation with the
12 department, proceed with ~~the~~ an investigation and its
13 legal disposition ~~thereof~~.

14 (c) Any expense incurred by the sheriff in the
15 performance of his or her duties under this section shall
16 be a legal charge against the county.

17 SEC. 188. Section 4466 of the Vehicle Code is
18 amended to read:

19 4466. (a) The department shall not issue a copy,
20 duplication, or substitution of a certificate of ownership
21 or license plate if, after a search of the records of the
22 department, the registered owner's address, as submitted
23 with the application for that document, is different from
24 that which appears in the records of the department,
25 unless the registered owner applies for that document in
26 person and presents all of the following:

27 (1) Proof of ownership of the vehicle that is acceptable
28 to the department.

29 (2) A driver's license or identification card containing
30 a picture of the licensee or cardholder issued to the
31 registered owner by the department pursuant to Chapter
32 1 (commencing with Section 12500) of Division 6. The
33 department shall conduct a search of its records to verify
34 the authenticity of any document submitted under this
35 paragraph.

36 (3) If the application is for the purpose of replacing a
37 certificate or license plate that was stolen, a copy of a
38 police report identifying the document as stolen.

39 (4) If the application is for the purpose of replacing a
40 certificate or license plate that was mutilated or

1 destroyed, the remnants of the mutilated or destroyed
2 document.

3 ~~(4)~~

4 (5) If the department has a record of a prior issuance
5 of a copy, duplication, or substitution of a certificate or
6 license plate for the vehicle, a copy of a report from the
7 Department of the California Highway Patrol verifying
8 the vehicle identification number of the vehicle.

9 (b) Subdivision (a) does not apply if the registered
10 owner's name and driver's license or identification card
11 number submitted on the application ~~matches~~ *match* the
12 name and driver's license or identification card number
13 contained in the department's registration record for that
14 vehicle, or if an application is submitted by or through a
15 dealer, a dismantler, an insurer, an agent of the insurer,
16 or a salvage pool.

17 SEC. 189. Section 11614 of the Vehicle Code is
18 amended to read:

19 11614. No lessor-retailer licensed under this chapter
20 shall do any of the following in connection with any
21 activity for which this license is required:

22 (a) Make or disseminate, or cause to be made or
23 disseminated, before the public in this state, in any
24 newspaper or other publication, or any advertising
25 device, or by oral representation, or in any other manner
26 or means whatever, any statement ~~which~~ *that* is untrue
27 or misleading and ~~which~~ *that* is known, or which by the
28 exercise of reasonable care should be known, to be untrue
29 or misleading; or make or disseminate, or cause to be ~~so~~
30 *made or* disseminated, any statement as part of a plan or
31 scheme with the intent not to sell any vehicle, or ~~sell~~
32 service so advertised, at the price stated therein, or as so
33 advertised.

34 (b) Advertise, or offer for sale in any manner, any
35 vehicle not actually for sale at the premises of the
36 lessor-retailer or available within a reasonable time to the
37 lessor-retailer at the time of the advertisement or offer.

38 (c) Fail within 48 hours to give, in writing, notification
39 to withdraw any advertisement of a vehicle that has been
40 sold or withdrawn from sale.

1 (d) Advertise any specific vehicle for sale without
2 identifying the vehicle by either its vehicle identification
3 number or license number.

4 (e) Advertise the total price of a vehicle without
5 including all costs to the purchaser at the time of delivery
6 at the lessor-retailer's premises, except sales tax, vehicle
7 registration fees, finance charges, certificate of
8 compliance or noncompliance fees not exceeding
9 thirty-five dollars (\$35) pursuant to any statute, and any
10 dealer documentary preparation charge. The dealer
11 documentary charge shall not exceed thirty-five dollars
12 (\$35).

13 (f) Fail to disclose, in the newspaper display
14 advertisement of a vehicle for sale, that there will be
15 added to the advertised total price, at the time of sale,
16 charges for sales tax, vehicle registration fees, the fee
17 charged by the state for the issuance of any certificate of
18 compliance or noncompliance pursuant to any statute,
19 finance charges, or any dealer documentary preparation
20 charge.

21 For purposes of this subdivision, "newspaper display
22 advertisement" means any advertisement in a
23 newspaper ~~which~~ *that* is two or more newspaper columns
24 in width or one newspaper column in width and more
25 than seven inches in length.

26 (g) Advertise or otherwise represent, or knowingly
27 allow to be advertised or represented on the
28 lessor-retailer's behalf or at the lessor-retailer's place of
29 business, that no downpayment is required in connection
30 with the sale of a vehicle when a downpayment is in fact
31 required and the buyer is advised or ~~of a vehicle when a~~
32 ~~downpayment is in fact required and the buyer is advised~~
33 ~~or~~ induced to finance the downpayment by a loan in
34 addition to any other loan financing the remainder of the
35 purchase price of the vehicle.

36 (h) Refuse to sell a vehicle to any person at the
37 advertised total price, exclusive of sales tax, vehicle
38 registration fees, finance charges, certificate of
39 compliance or noncompliance pursuant to any statute,
40 and any dealer documentary preparation charge, which

1 charges shall not exceed thirty-five dollars (\$35) for the
2 documentary preparation charge and thirty-five dollars
3 (\$35) for the certificate of compliance or noncompliance
4 pursuant to any statute, while the vehicle remains unsold
5 or unleased, unless the advertisement states the
6 advertised total price is good only for a specified time and
7 the time has elapsed.

8 (i) Engage in the business for which the licensee is
9 licensed without having in force and effect a bond
10 required by Section 11612.

11 (j) Engage in the business for which the lessor-retailer
12 is licensed without at all times maintaining a principal
13 place of business and any branch office location required
14 by this chapter.

15 (k) Permit the use of the lessor-retailer license,
16 supplies, or books by any other person for the purpose of
17 permitting that person to engage in the sale of vehicles
18 required to be registered under this code, or to permit the
19 use of the lessor-retailer license, supplies, or books to
20 operate a branch office location to be used by any other
21 person, if, in either situation, the licensee has no financial
22 or equitable interest or investment in the vehicles sold by,
23 or the business of, or branch office location used by, the
24 person, or has no interest or investment other than
25 commissions, compensations, fees, or any other thing of
26 value received for the use of the lessor-retailer license,
27 supplies, or books to engage in the sale of vehicles.

28 (l) Violate any provision of Article 10 (commencing
29 with Section 28050) of Chapter 5 of Division 12.

30 (m) Represent the dealer documentary preparation
31 charge, or certificate of compliance or noncompliance
32 fee, as a governmental fee.

33 (n) Advertise free merchandise, gifts, or services
34 provided by a lessor-retailer contingent on the purchase
35 of a vehicle. "Free" includes merchandise or services
36 offered for sale at a price less than the lessor-retailer's cost
37 of the merchandise or services.

38 (o) Advertise vehicles and related goods or services
39 with the intent not to supply reasonably expectable

1 demand, unless the advertisement discloses a limitation
2 of quantity.

3 (p) Use the term “rebate” or similar words such as
4 “cash back” in advertising the sale of a vehicle.

5 (q) Require a person to pay a higher price for a vehicle
6 and related goods or services for receiving advertised
7 credit terms than the cash price the same person would
8 have to pay to purchase the same vehicle and related
9 goods or services. For the purpose of this subdivision,
10 “cash price” has the meaning as defined in subdivision
11 (e) of Section 2981 of the Civil Code.

12 (r) Misrepresent the authority of a representative or
13 agent to negotiate the final terms of a transaction.

14 (s) Violate any law prohibiting bait and switch
15 advertising, including, but not limited to, the guides
16 against bait advertising set forth in Part 238 of Title 16 of
17 the Code of Federal Regulations, as those regulations
18 read on January 1, 1988.

19 (t) Make any untrue or misleading statement
20 indicating that a vehicle is equipped with all the factory
21 installed optional equipment the manufacturer offers,
22 including, but not limited to, a false statement that a
23 vehicle is “fully factory equipped.”

24 (u) Advertise any underselling claim, such as “we
25 have the lowest prices” or “we will beat any dealer’s
26 price,” unless the lessor-retailer has conducted a recent
27 survey showing that the lessor-retailer sells its vehicles at
28 lower prices than any other licensee in its trade area and
29 maintains records to adequately substantiate the ~~claims~~
30 *claim*. The substantiating records shall be made available
31 to the department upon request.

32 (v) To display or offer for sale any used vehicle unless
33 there is affixed to the vehicle the Federal Trade
34 Commission’s Buyer’s Guide as required by Part 455 of
35 Title 16 of the Code of Federal Regulations.

36 SEC. 190. Section 40000.15 of the Vehicle Code is
37 amended to read:

38 40000.15. A violation of any of the following provisions
39 shall constitute a misdemeanor, and not an infraction:

40 Sections 23103 and 23104, relating to reckless driving.

1 Section 23109, relating to speed contests or exhibitions.
2 *Subdivision (a) of Section 23110, ~~subdivision (a),~~*
3 *relating to throwing at vehicles.*
4 Section 23152, relating to driving under the influence.
5 Subdivision (b) of Section 23222, relating to possession
6 of marijuana.
7 Subdivision (a) or (b) of Section 23224, relating to
8 persons under 21 years of age knowingly driving, or being
9 a passenger in, a motor vehicle carrying any alcoholic
10 beverage.
11 ~~Sections 23237 and 23244, relating to ignition interlock~~
12 ~~devices.~~
13 Section 23253, relating to officers on vehicular
14 crossings.
15 Section 23332, relating to trespassing.
16 Section 24011.3, relating to vehicle bumper strength
17 notices.
18 Section 27150.1, relating to sale of exhaust systems.
19 Section 27362, relating to child passenger seat
20 restraints.
21 Section 28050, relating to true mileage driven.
22 Section 28050.5, relating to nonfunctional odometers.
23 Section 28051, relating to resetting ~~odometer~~
24 ~~odometers.~~
25 Section 28051.5, relating to ~~device~~ *devices* to reset
26 ~~odometer odometers.~~
27 Subdivision (d) of Section 28150, relating to possessing
28 four or more jamming devices.
29 SEC. 191. Section 1062 of the Water Code is amended
30 to read:
31 1062. (a) The Legislature ~~hereby~~ finds and declares
32 as follows:
33 (1) The watershed of the San Francisco
34 Bay/Sacramento-San Joaquin Delta Estuary supplies a
35 large percentage of water used in California.
36 (2) The State Water Resources Control Board and the
37 California regional water quality control boards are
38 responsible for protecting all beneficial uses of those
39 waters. Beneficial uses include those defined in
40 subdivision (f) of Section 13050.

1 (3) The board is engaged in a hearing process to
2 consider revisions to the water quality standards
3 contained in the existing water quality control plan for
4 the Sacramento-San Joaquin Delta and Suisun Marsh and
5 to consider new standards for San Francisco Bay.

6 (4) There is a broad diversity of viewpoints regarding
7 appropriate water quality standards and priorities with
8 respect to the various beneficial uses.

9 (5) Any new or revised standards and plans that derive
10 from the hearing process will have a substantial impact on
11 the people of California, and there is significant public
12 interest in these deliberations.

13 (b) It is the intent of the Legislature that the hearing
14 process shall provide for the involvement of all those who
15 wish to participate in these deliberations. It is further the
16 intent of the Legislature that members of the general
17 public shall have full access to the proceedings and to all
18 official records of the hearings.

19 (c) The board shall lodge one copy of the transcripts
20 of the hearings referred to in subdivision (a) for
21 inspection and use by the general public at the following
22 locations: the headquarters of the State Water Resources
23 Control Board in Sacramento; the headquarters of the
24 regional water quality control boards in Los Angeles,
25 Fresno, and San Diego; and the headquarters of the
26 Environmental Protection Agency in San Francisco. The
27 transcripts shall be updated on a timely basis throughout
28 the course of the board's bay-delta hearing process. At the
29 conclusion of the hearing process, one transcript shall be
30 maintained at the headquarters of the board in
31 Sacramento.

32 (d) The board shall provide for staff services at the
33 headquarters of the board in Sacramento and at the
34 headquarters at each of the regional water quality control
35 boards listed in subdivision (c) to assist the public in
36 utilizing the transcripts and other documents and to
37 facilitate participation by interested parties in the
38 hearing process.

39 (e) During the course of the board's bay-delta hearing
40 process, the board shall provide for public access to an

1 electronic data retrieval system capable of displaying the
2 text of the hearing transcript at the following locations:
3 ~~The~~ *the* headquarters of the board in Sacramento; the
4 headquarters of the regional water quality control boards
5 in Oakland, Los Angeles, Fresno, Redding, Riverside, and
6 San Diego; and the headquarters of the Environmental
7 Protection Agency in San Francisco.

8 SEC. 192. Section 319 of the Welfare and Institutions
9 Code is amended to read:

10 319. At the initial petition hearing, the court shall
11 examine the child's parents, guardians, or other persons
12 having relevant knowledge and hear the relevant
13 evidence as the child, the child's parents or guardians, the
14 petitioner, or their counsel desires to present. The court
15 may examine the child, as provided in Section 350.

16 The social worker shall report to the court on the
17 reasons why the child has been removed from the
18 parent's custody; the need, if any, for continued
19 detention; ~~on~~ the available services and the referral
20 methods to those services that could facilitate the return
21 of the child to the custody of the child's parents or
22 guardians; and whether there are any relatives who are
23 able and willing to take temporary custody of the child.
24 The court shall order the release of the child from custody
25 unless a prima facie showing has been made that the child
26 comes within Section 300 and any of the following
27 circumstances exist:

28 (a) There is a substantial danger to the physical health
29 of the child or the child is suffering severe emotional
30 damage, and there are no reasonable means by which the
31 child's physical or emotional health may be protected
32 without removing the child from the parents' or
33 guardians' physical custody.

34 (b) There is substantial evidence that a parent,
35 guardian, or custodian of the child is likely to flee the
36 jurisdiction of the court.

37 (c) The child has left a placement in which he or she
38 was placed by the juvenile court.



(d) The child indicates an unwillingness to return home, if the child has been physically or sexually abused by a person residing in the home.

The court shall also make a determination on the record as to whether reasonable efforts were made to prevent or eliminate the need for removal of the child from his or her home, pursuant to subdivision (b) of Section 306, and whether there are available services that would prevent the need for further detention. Services to be considered for purposes of making this determination are case management, counseling, emergency shelter care, emergency in-home caretakers, out-of-home respite care, teaching and demonstrating homemakers, parenting training, transportation, and any other child welfare services authorized by the State Department of Social Services pursuant to Chapter 5 (commencing with Section 16500) of Part 4 of Division 9. The court shall also review whether the social worker has considered whether a referral to public assistance services pursuant to Chapter 2 (commencing with Section 11200) of ~~Part 3~~, and Chapter 7 (commencing with Section 14000) of Part 3, Chapter 1 (commencing with Section 17000) of Part 5, and Chapter 10 (commencing with Section 18900) of Part 6, of Division 9 would have eliminated the need to take temporary custody of the child or would prevent the need for further detention. If the child can be returned to the custody of his or her parent or guardian through the provision of those services, the court shall place the child with his or her parent or guardian and order that the services shall be provided. If the child cannot be returned to the custody of his or her parent or guardian, the court shall determine if there is a relative who is able and willing to care for the child. Where the first contact with the family has occurred during an emergency situation in which the child could not safely remain at home, even with reasonable services being provided, the court shall make a finding that the lack of preplacement preventive efforts ~~were~~ *was* reasonable. Whenever a court orders a child detained, the court shall state the facts on which the decision is based, shall specify why the initial removal was

1 necessary, and shall order services to be provided as soon
2 as possible to reunify the child and his or her family if
3 appropriate.

4 When the child is not released from custody, the court
5 may order that the child shall be placed in the suitable
6 home of a relative—~~or~~ in an emergency shelter or other
7 suitable licensed place—~~or~~ in a place exempt from
8 licensure designated by the juvenile court, or in an
9 appropriate certified family home—~~whose for which the~~
10 license is pending and all the prelicense requirements for
11 that placement have been met as set forth in subdivision
12 (e) of Section 361.2 for a period not to exceed 15 judicial
13 days.

14 As used in this section, “relative” means an adult who
15 is related to the child by blood, adoption, or affinity within
16 the fifth degree of kinship, including stepparents,
17 stepsiblings, and all relatives whose status is preceded by
18 the words “great,” “great-great,” or “grand,” or the
19 spouse of any of these persons, even if the marriage was
20 terminated by death or dissolution. However, only the
21 following relatives shall be given preferential
22 consideration for placement of the child: an adult who is
23 a grandparent, aunt, uncle, or a sibling of the child.

24 The court shall consider the recommendations of the
25 social worker based on the emergency assessment of the
26 relative’s suitability, including the results of a criminal
27 records check and prior child abuse allegations, if any,
28 prior to ordering that the child be placed with a relative.
29 The social worker shall initiate the assessment pursuant
30 to Section 361.3 of any relative to be considered for
31 continuing placement.

32 SEC. 193. Section 366.26 of the Welfare and
33 Institutions Code is amended to read:

34 366.26. (a) This section applies to children who are
35 adjudged dependent children of the juvenile court
36 pursuant to subdivision (c) of Section 360. The
37 procedures specified herein are the exclusive procedures
38 for conducting these hearings; Part 2 (commencing with
39 Section 3020) of Division 8 of the Family Code is not
40 applicable to these proceedings. Section 8714.7 of the

1 Family Code is applicable and available to all dependent
2 children meeting the requirements of that section. For
3 children who are adjudged dependent children of the
4 juvenile court pursuant to subdivision (c) of Section 360,
5 this section and Sections 8604, 8605, 8606, and 8700 of the
6 Family Code and Chapter 5 (commencing with Section
7 7660) of Part 3 of Division 12 of the Family Code specify
8 the exclusive procedures for permanently terminating
9 parental rights with regard to, or establishing legal
10 guardianship of, the child while the child is a dependent
11 child of the juvenile court.

12 (b) At the hearing, ~~that~~ *which* shall be held in juvenile
13 court for all children who are dependents of the juvenile
14 court, the court, in order to provide stable, permanent
15 homes for these children, shall review the report as
16 specified in Section 361.5, 366.21, or 366.22, shall indicate
17 that the court has read and considered it, shall receive
18 other evidence that the parties may present, and then
19 shall make findings and orders in the following order of
20 preference:

21 (1) Terminate the rights of the parent or parents and
22 order that the child be placed for adoption and, upon the
23 filing of a petition for adoption in the juvenile court, order
24 that a hearing be set. The court shall proceed with the
25 adoption after the appellate rights of the natural parents
26 have been exhausted.

27 (2) On making a finding under paragraph (3) of
28 subdivision (c), identify adoption as the permanent
29 placement goal and order that efforts be made to locate
30 an appropriate adoptive family for the child within a
31 period not to exceed 180 days.

32 (3) Appoint a legal guardian for the child and order
33 that letters of guardianship issue.

34 (4) Order that the child be placed in long-term foster
35 care, subject to the periodic review of the juvenile court
36 under Section 366.3.

37 In choosing among the above alternatives, the court
38 shall proceed pursuant to subdivision (c).

39 (c) (1) If the court determines, based on the
40 assessment provided as ordered under subdivision (i) of

1 Section 366.21 or subdivision (b) of Section 366.22, and
2 any other relevant evidence, by a clear and convincing
3 standard, that it is likely the child will be adopted, the
4 court shall terminate parental rights and order the child
5 placed for adoption. The fact that the child is not yet
6 placed in a pre-adoptive home nor with a relative or
7 foster family who is prepared to adopt the child, shall not
8 constitute a basis for the court to conclude that it is not
9 likely the child will be adopted. A finding under
10 subdivision (b) or paragraph (1) of subdivision (e) of
11 Section 361.5 that reunification services shall not be
12 offered, *or a finding* under subdivision (e) of Section
13 366.21 that the whereabouts of a parent have been
14 unknown for six months or that the parent has failed to
15 visit or contact the child for six months or that the parent
16 has been convicted of a felony indicating parental
17 unfitness, or; *a finding* under Section 366.21 or 366.22; that
18 the court has continued to remove the child from the
19 custody of the parent or guardian and has terminated
20 reunification services, shall constitute a sufficient basis for
21 termination of parental rights unless the court finds a
22 compelling reason for determining that termination
23 would be detrimental to the child due to one or more of
24 the following circumstances:

25 (A) The parents or guardians have maintained regular
26 visitation and contact with the child and the child would
27 benefit from continuing the relationship.

28 (B) A child 12 years of age or older objects to
29 termination of parental rights.

30 (C) The child is placed in a residential treatment
31 facility, adoption is unlikely or undesirable, and
32 continuation of parental rights will not prevent finding
33 the child a permanent family placement if the parents
34 cannot resume custody when residential care is no longer
35 needed.

36 (D) The child is living with a relative or foster parent
37 who is unable or unwilling to adopt the child because of
38 exceptional circumstances; that do not include an
39 unwillingness to accept legal or financial responsibility
40 for the child, but who is willing and ~~capable of providing~~

1 *able to provide* the child with a stable and permanent
2 environment, and the removal of the child from the
3 physical custody of his or her relative or foster parent
4 would be detrimental to the emotional well-being of the
5 child. This subparagraph does not apply to any child who
6 is living with a nonrelative and who is either (i) under six
7 years of age or (ii) a member of a sibling group where at
8 least one child is under six years of age and the siblings
9 are, or should be, permanently placed together.

10 If the court finds that termination of parental rights
11 would be detrimental to the child pursuant to
12 subparagraph (A), (B), (C), or (D), it shall state its
13 reasons in writing or on the record.

14 (2) The court shall not terminate parental rights if at
15 each and every hearing at which the court was required
16 to consider reasonable efforts or services, the court has
17 found that reasonable efforts were not made or that
18 reasonable services were not offered or provided.

19 (3) If the court finds that termination of parental
20 rights would not be detrimental to the child pursuant to
21 paragraph (1) and that the child has a probability for
22 adoption but is difficult to place for adoption and there is
23 no identified or available prospective adoptive parent,
24 the court may identify adoption as the permanent
25 placement goal and, without terminating parental rights,
26 order that efforts be made to locate an appropriate
27 adoptive family for the child within a period not to exceed
28 180 days. During this 180-day period, the public agency
29 responsible for seeking adoptive parents for each child
30 shall, to the extent possible, contact other private and
31 public adoption agencies regarding the availability of the
32 child for adoption. During the 180-day period, the public
33 agency shall conduct the search for adoptive parents in
34 the same manner as prescribed for children in Sections
35 8708 and 8709 of the Family Code. At the expiration of this
36 period, another hearing shall be held and the court shall
37 proceed pursuant to paragraph (1), (3), or (4) of
38 subdivision (b). For purposes of this section, a child may
39 only be found to be difficult to place for adoption if there
40 is no identified or available prospective adoptive parent

1 for the child because of the child's membership in a
2 sibling group, or the presence of a diagnosed medical,
3 physical, or mental handicap, or the ~~child is the age of~~
4 *child's age is* seven years or more.

5 (4) If the court finds that adoption of the child or
6 termination of parental rights is not in the best interest of
7 the child, because one of the conditions in subparagraph
8 (A), (B), (C), or (D) of paragraph (1) or in paragraph
9 (2) applies, the court shall either order that the present
10 caretakers or other appropriate persons shall become
11 legal guardians of the child or order that the child remain
12 in long-term foster care. Legal guardianship shall be
13 considered before long-term foster care, if it is in the best
14 interests of the child and if a suitable guardian can be
15 found. When the child is living with a relative or a foster
16 parent who is willing and ~~capable of providing~~ *able to*
17 *provide* a stable and permanent environment, but not
18 willing to become a legal guardian, the child shall not be
19 removed from the home if the court finds the removal
20 would be seriously detrimental to the emotional
21 well-being of the child because the child has substantial
22 psychological ties to the relative caretaker or foster
23 parents. The court shall also make an order for visitation
24 with the parents or guardians unless the court finds by a
25 preponderance of the evidence that the visitation would
26 be detrimental to the physical or emotional well-being of
27 the child.

28 (5) If the court finds that the child should not be
29 placed for adoption, that legal guardianship shall not be
30 established, and that there are no suitable foster parents
31 except exclusive-use homes available to provide the child
32 with a stable and permanent environment, the court may
33 order the care, custody, and control of the child
34 transferred from the county welfare department to a
35 licensed foster family agency. The court shall consider the
36 written recommendation of the county welfare director
37 regarding the suitability of the transfer. The transfer shall
38 be subject to further court orders.

39 The licensed foster family agency shall place the child
40 in a suitable licensed or exclusive-use home ~~which~~ *that*

1 has been certified by the agency as meeting licensing
2 standards. The licensed foster family agency shall be
3 responsible for supporting the child and for providing
4 appropriate services to the child, including those services
5 ordered by the court. Responsibility for the support of the
6 child shall not, in and of itself, create liability on the part
7 of the foster family agency to third persons injured by the
8 child. Those children whose care, custody, and control are
9 transferred to a foster family agency shall not be eligible
10 for foster care maintenance payments or child welfare
11 services, except for emergency response services
12 pursuant to Section 16504.

13 (d) The proceeding for the appointment of a guardian
14 for a child who is a dependent of the juvenile court shall
15 be in the juvenile court. If the court finds pursuant to this
16 section that legal guardianship is the appropriate
17 permanent plan, it shall appoint the legal guardian and
18 issue letters of guardianship. The assessment prepared
19 pursuant to subdivision (g) of Section 361.5, subdivision
20 (i) of Section 366.21, and subdivision (b) of Section 366.22
21 shall be read and considered by the court prior to the
22 appointment, and this shall be reflected in the minutes of
23 the court. The person preparing the assessment may be
24 called and examined by any party to the proceeding.

25 (e) The proceeding for the adoption of a child who is
26 a dependent of the juvenile court shall be in the juvenile
27 court if the court finds pursuant to this section that
28 adoption is the appropriate permanent plan and the
29 petition for adoption is filed in the juvenile court. Upon
30 the filing of a petition for adoption, the juvenile court
31 shall order that an adoption hearing be set. The court shall
32 proceed with the adoption after the appellate rights of
33 the natural parents have been exhausted. The full report
34 required by Section 8715 of the Family Code shall be read
35 and considered by the court prior to the adoption and this
36 shall be reflected in the minutes of the court. The person
37 preparing the report may be called and examined by any
38 party to the proceeding. It is the intent of the Legislature,
39 pursuant to this subdivision, to give potential adoptive
40 parents the option of filing in the juvenile court the

1 petition for the adoption of a child who is a dependent of
2 the juvenile court. Nothing in this section is intended to
3 prevent the filing of a petition for adoption in any other
4 court as permitted by law, instead of in the juvenile court.

5 (f) At the beginning of any proceeding pursuant to
6 this section, if the child or the parents are not being
7 represented by previously retained or appointed counsel,
8 the court shall proceed as follows:

9 (1) The court shall consider whether the interests of
10 the child require the appointment of counsel. If the court
11 finds that the interests of the child do require this
12 protection, the court shall appoint counsel to represent
13 the child. If the court finds that the interests of the child
14 require the representation of counsel, counsel shall be
15 appointed whether or not the child is able to afford
16 counsel. The child shall not be present in court unless the
17 child or the child's counsel so requests or the court so
18 orders.

19 (2) If a parent appears without counsel and is unable
20 to afford counsel, the court shall appoint counsel for the
21 parent, unless this representation is knowingly and
22 intelligently waived. The same counsel shall not be
23 appointed to represent both the child and his or her
24 parent. The public defender or private counsel may be
25 appointed as counsel for the parent.

26 (3) Private counsel appointed under this section shall
27 receive a reasonable sum for compensation and expenses,
28 the amount of which shall be determined by the court.
29 The amount shall be paid by the real parties in interest,
30 other than the child, in any proportions the court deems
31 just. However, if the court finds that any of the real parties
32 in interest are unable to afford counsel, the amount shall
33 be paid out of the general fund of the county.

34 (g) The court may continue the proceeding for not to
35 exceed 30 days as necessary to appoint counsel, and to
36 enable counsel to become acquainted with the case.

37 (h) At all proceedings under this section, the court
38 shall consider the wishes of the child and shall act in the
39 best interests of the child.

1 The testimony of the child may be taken in chambers
2 and outside the presence of the child's parent or parents
3 if the child's parent or parents are represented by
4 counsel, the counsel is present, and any of the following
5 circumstances exist:

6 (1) The court determines that testimony in chambers
7 is necessary to ensure truthful testimony.

8 (2) The child is likely to be intimidated by a formal
9 courtroom setting.

10 (3) The child is afraid to testify in front of his or her
11 parent or parents.

12 After testimony in chambers, the parent or parents of
13 the child may elect to have the court reporter read back
14 the testimony or have the testimony summarized by
15 counsel for the parent or parents.

16 The testimony of a child also may be taken in chambers
17 and outside the presence of the guardian or guardians of
18 a child under the circumstances specified in this
19 subdivision.

20 (i) Any order of the court permanently terminating
21 parental rights under this section shall be conclusive and
22 binding upon the child, upon the parent or parents, and
23 upon all other persons who have been served with a
24 citation by publication or otherwise as provided in this
25 chapter. After making the order, the court shall have no
26 power to set aside, change, or modify it, but nothing in
27 this section shall be construed to limit the right to appeal
28 the order.

29 (j) If the court, by order or judgment, declares the
30 child free from the custody and control of both parents,
31 or one parent if the other does not have custody and
32 control, the court shall at the same time order the child
33 referred to the State Department of Social Services or a
34 licensed adoption agency for adoptive placement by the
35 agency. However, no petition for adoption may be
36 granted until the appellate rights of the natural parents
37 have been exhausted. The State Department of Social
38 Services or licensed adoption agency shall be responsible
39 for the custody and supervision of the child and shall be
40 entitled to the exclusive care and control of the child at

1 all times until a petition for adoption is granted. With the
2 consent of the agency, the court may appoint a guardian
3 of the child, who shall serve until the child is adopted.

4 (k) Notwithstanding any other provision of law, the
5 application of any person who, as a relative caretaker or
6 foster parent, has cared for a dependent child for whom
7 the court has approved a permanent plan for adoption, or
8 who has been freed for adoption, shall be given
9 preference with respect to that child over all other
10 applications for adoptive placement if the agency making
11 the placement determines that the child has substantial
12 emotional ties to the relative caretaker or foster parent
13 and removal from the relative caretaker or foster parent
14 would be seriously detrimental to the child's emotional
15 well-being.

16 As used in this subdivision, "preference" means that
17 the application shall be processed and, if satisfactory, the
18 family study shall be completed before the processing of
19 the application of any other person for the adoptive
20 placement of the child.

21 (l) (1) An order by the court that a hearing pursuant
22 to this section be held is not appealable at any time unless
23 all of the following ~~applies~~ *apply*:

24 (A) A petition for extraordinary writ review was filed
25 in a timely manner.

26 (B) The petition substantively addressed the specific
27 issues to be challenged and supported that challenge by
28 an adequate record.

29 (C) The petition for extraordinary writ review was
30 summarily denied or otherwise not decided on the
31 merits.

32 (2) Failure to file a petition for extraordinary writ
33 review within the period specified by rule, to
34 substantively address the specific issues challenged, or to
35 support that challenge by an adequate record shall
36 preclude subsequent review by appeal of the findings and
37 orders made pursuant to this section.

38 (3) The Judicial Council shall adopt rules of court,
39 effective January 1, 1995, to ensure all of the following:

1 (A) A trial court, after issuance of an order directing
2 a hearing pursuant to this section be held, shall advise all
3 parties of the requirement of filing a petition for
4 extraordinary writ review as set forth in this subdivision
5 in order to preserve any right to appeal in these issues.
6 This notice shall be made orally to a party if they are
7 present at the time of the making of the order or by
8 first-class mail by the clerk of the court to the last known
9 address of a party not present at the time of the making
10 of the order.

11 (B) The prompt transmittal of the records from the
12 trial court to the appellate court.

13 (C) That adequate time requirements for counsel and
14 court personnel exist to implement the objective of this
15 subdivision.

16 (D) That the parent or guardian, or their trial counsel
17 or other counsel, is charged with the responsibility of
18 filing a petition for extraordinary writ relief pursuant to
19 this subdivision.

20 (4) The intent of this subdivision is to do both of the
21 following:

22 (A) Make every reasonable attempt to achieve a
23 substantive and meritorious review by the appellate
24 court within the time specified in Sections 366.21 and
25 366.22 for holding a hearing pursuant to this section.

26 (B) Encourage the appellate court to determine all
27 writ petitions filed pursuant to this subdivision on their
28 merits.

29 (5) This subdivision shall only apply to cases in which
30 an order to set a hearing pursuant to this section is issued
31 on or after January 1, 1995.

32 SEC. 194. Section 781 of the Welfare and Institutions
33 Code is amended to read:

34 781. (a) ~~Where~~ *When* a petition has been filed with
35 a juvenile court to commence proceedings to adjudge a
36 person a ward of the court, a person is cited to appear
37 before a probation officer or is taken before a probation
38 officer pursuant to Section 626, or a minor is taken before
39 any officer of a law enforcement agency, the person or
40 the county probation officer may petition the court for

1 sealing of the records. The petition to seal the records
2 may be filed five years or more after the jurisdiction of the
3 juvenile court has terminated over the person or, if no
4 juvenile court petition was filed, five years or more after
5 the person was cited to appear before a probation officer
6 or was taken before a probation officer pursuant to
7 Section 626 or was taken before any officer of a law
8 enforcement agency, or at any time after the person has
9 reached the age of 18 years. The petition to seal the
10 records shall include a statement disclosing whether
11 there is any pending civil litigation relating to the
12 criminal act that caused the records to be created. As used
13 in this section, “records” include records of arrest, records
14 relating to the person’s case, and records in the custody
15 of the juvenile court, probation officer and any other
16 agencies, including law enforcement agencies, and public
17 officials that the petitioner alleges, in his or her petition,
18 to have custody of the records. The court shall notify the
19 district attorney of the county and the county probation
20 officer, if he or she is not the petitioner, and the district
21 attorney or probation officer or any of their deputies or
22 any other person having relevant evidence may testify at
23 the hearing on the petition. If, after a hearing, the court
24 finds that since the termination of jurisdiction or action
25 pursuant to Section 626, as the case may be, he or she has
26 not been convicted of a felony or of any misdemeanor
27 involving moral turpitude, that rehabilitation has been
28 attained to the satisfaction of the court, and that the
29 petition indicates that there is no currently pending civil
30 litigation directly relating to, or arising from, the criminal
31 act that caused the records to be created, it shall order all
32 records, papers, and exhibits in the person’s case in the
33 custody of the juvenile court sealed, including the
34 juvenile court record, minute book entries, and entries on
35 dockets, and other records relating to the case in the
36 custody of the other agencies and officials as are named
37 in the order. If a ward of the juvenile court is subject to
38 the registration requirements set forth in Section 290 of
39 the Penal Code, a court, in ordering the sealing of the
40 juvenile records of the person, also shall provide in the



1 order that the person is relieved from the registration
2 requirement and for the destruction of all registration
3 information in the custody of the Department of Justice
4 and other agencies and officials. Notwithstanding any
5 other provision of law, the court shall not order the
6 person's records sealed in any case in which the person
7 has been found by the juvenile court to have committed
8 an offense listed in subdivision (b) of, paragraph (2) of
9 subdivision (d) of, or subdivision (e) of, Section 707 until
10 at least six years have elapsed since commission of the
11 offense listed in those provisions. The court shall not order
12 the records sealed in any case unless the petition indicates
13 that there is no pending civil litigation directly relating to,
14 or arising from, the criminal act that caused the records
15 to be created. However, once the civil case is closed, the
16 records may be sealed. Once the court has ordered the
17 person's records sealed, the proceedings in the case shall
18 be deemed never to have occurred, and the person may
19 properly reply accordingly to any inquiry about the
20 events, the records of which are ordered sealed. The
21 court shall send a copy of the order to each agency and
22 official named therein, directing the agency to seal its
23 records and stating the date thereafter to destroy the
24 sealed records. Each agency and official shall seal the
25 records in its custody as directed by the order, shall advise
26 the court of its compliance, and thereupon shall seal the
27 copy of the court's order for sealing of records that it, he,
28 or she received. The person who is the subject of records
29 sealed pursuant to this section may petition the superior
30 court to permit inspection of the records by persons
31 named in the petition, and the superior court may so
32 order. Otherwise, except as provided in subdivision (b),
33 the records shall not be open to inspection.

34 (b) In any action or proceeding based upon
35 defamation, a court, upon a showing of good cause, may
36 order any records sealed under this section to be opened
37 and admitted into evidence. The records shall be
38 confidential and shall be available for inspection only by
39 the court, jury, parties, counsel for the parties, and any
40 other person who is authorized by the court to inspect

1 them. Upon the judgment in the action or proceeding
2 becoming final, the court shall order the records sealed.

3 (c) (1) Subdivision (a) does not apply to Department
4 of Motor ~~Vehicle~~ *Vehicles* records of any convictions for
5 offenses under the Vehicle Code or any local ordinance
6 relating to the operation, stopping and standing, or
7 parking of a vehicle where the record of that conviction
8 would be a public record under Section 1808 of the
9 Vehicle Code. However, if a court orders a case record
10 containing that conviction to be sealed under this section,
11 and if the Department of Motor Vehicles maintains a
12 public record of the conviction, the court shall notify the
13 Department of Motor Vehicles of the sealing and the
14 department shall advise the court of its receipt of the
15 notice.

16 Notwithstanding any other provision of law,
17 subsequent to the notification, the Department of Motor
18 Vehicles shall allow access to its record of convictions only
19 to the subject of the record and to insurers ~~which~~ *that*
20 have been granted requester code numbers by the
21 department. Any insurer to which a record of conviction
22 is disclosed, when that conviction record has otherwise
23 been sealed under this section, shall be given notice of the
24 sealing when the record is disclosed to the insurer. The
25 insurer may use the information contained in the record
26 for purposes of determining eligibility for insurance and
27 insurance rates for the subject of the record, and the
28 information shall not be used for any other purpose nor
29 shall it be disclosed by an insurer to any person or party
30 not having access to the record.

31 (2) This subdivision shall not be construed as
32 preventing the sealing of any record ~~which~~ *that* is
33 maintained by any agency or party other than the
34 Department of Motor Vehicles.

35 (3) This subdivision shall not be construed as affecting
36 the procedures or authority of the Department of Motor
37 Vehicles for purging department records.

38 (d) Unless for good cause the court determines that
39 the juvenile court record shall be retained, the court shall
40 order the destruction of a person's juvenile court records

1 that are sealed pursuant to this section as follows: five
2 years after the record was ordered sealed, if the person
3 who is the subject of the record was alleged or adjudged
4 to be a person described by Section 601; or when the
5 person who is the subject of the record reaches the age of
6 38 if the person was alleged or adjudged to be a person
7 described by Section 602. Any other agency in possession
8 of sealed records may destroy its records five years after
9 the record was ordered sealed.

10 (e) This section shall not permit the sealing of a
11 person's juvenile court records for an offense where the
12 person is convicted of that offense in a criminal court
13 pursuant to the provisions of Section 707.1. This
14 subdivision is declaratory of existing law.

15 (f) Notwithstanding any other provision of law, the
16 records of a juvenile who was 16 years of age or older at
17 the time he or she committed any criminal offense listed
18 in subdivision (b) of Section 707 shall not be destroyed.

19 (g) Notwithstanding any other provision of law, in any
20 criminal prosecution in which an enhancement is alleged
21 pursuant to Section 667 or 1170.12 of the Penal Code, the
22 parties shall be entitled to inspect, copy, and introduce
23 into evidence for the purpose of proving the alleged
24 enhancement, any juvenile records of the person named
25 in the criminal complaint or information, whether or not
26 those records have been sealed, where the person was
27 found to have committed, when ~~they were~~ *he or she was*
28 16 years of age or older, an offense set forth in subdivision
29 (b) of Section 707. Except as provided herein, these
30 records shall be confidential and available for inspection
31 and copying only by the court, the jury, as authorized by
32 the court, parties, counsel for the parties, and any other
33 person authorized by the court. In the case of an acquittal
34 or if the enhancement allegations under Section 667 or
35 1170.12 of the Penal Code are stricken, the court shall
36 order the records resealed.

37 SEC. 195. Section 1790 of the Welfare and Institutions
38 Code is amended and renumbered to read:

39 ~~1790.~~

1 1787. The Legislature finds and declares all of the
2 following:

3 (a) A tremendous percentage of juveniles who
4 commit status offenses including, but not limited to,
5 running away, school truancy and incorrigibility,
6 ultimately enter the juvenile justice system for
7 subsequently engaging in delinquent, otherwise criminal
8 behavior.

9 (b) In 1990, it was estimated that 48,629 youths ran
10 away from their homes in California.

11 (c) In 1989, 776 runaway youths served by 33 nonprofit
12 youth-runaway shelters in California, surveyed during a
13 one-month period, identified one or more of the following
14 as a problem:

15

16 (1) Family crisis	73%
17 (2) School problems	63%
18 (3) Victims of crime/abuse	57%
19 (4) Homeless/runaway	55%
20 (5) Substance abuse	43%
21 (6) Delinquent behavior	26%
22 (7) Other	9%

23

24 (d) It is estimated that 43 emergency shelters
25 presently serve runaway youths as well as homeless
26 youths and adults in California.

27 (e) It is estimated that 10 transitional living facilities
28 are operated presently in California to provide youths
29 with independent living skills, employment skills, and
30 home responsibilities.

31 (f) It is conservatively projected that by the year 2000
32 there will be a deficit of 1,222 emergency shelter beds and
33 930 long-term beds statewide.

34 (g) Resources for runaway, homeless, and at-risk
35 youth and their families are severely inadequate to meet
36 their needs.

37 (h) The Counties of Fresno, Sacramento, San
38 Bernardino, and Solano either (1) do not provide
39 temporary or long-term shelter services or family crises
40 services to runaway, homeless, and nonrunaway youth, or

1 (2) do provide such services but at levels which
2 substantially fail to meet the need.

3 The purpose of this chapter, therefore, is to establish
4 three-year pilot projects in San Joaquin Central Valley, in
5 the northern region of California, and in the southern
6 region of California, whereby each project will provide
7 temporary shelter services, transitional living shelter
8 services, and low-cost family crisis resolution services
9 based on a sliding fee scale to runaway youth,
10 nonrunaway youth, and their working families. It is the
11 intent of this chapter that services will be provided to
12 prevent at-risk youth from engaging in delinquent and
13 criminal behavior and to reduce the numbers of at-risk
14 families from engaging in neglectful, abusive, and
15 criminal behavior.

16 SEC. 196. Section 1791 of the Welfare and Institutions
17 Code is amended and renumbered to read:

18 ~~1791.~~

19 1788. Each Runaway Youth and Families in Crisis
20 Project established under this chapter shall provide
21 services which shall include, but not be limited to, all of
22 the following:

23 (a) Temporary shelter and related services to
24 runaway youth. The services shall include:

25 (1) Food and access to overnight shelter for no more
26 than 14 days.

27 (2) Counseling and referrals to services which address
28 immediate emotional needs or problems.

29 (3) Screening for basic health needs and referral to
30 public and private health providers for health care.
31 Shelters that are not equipped to house a youth with
32 substance abuse problems shall refer that youth to an
33 appropriate clinic or facility. The shelter shall monitor the
34 youth's progress and assist the youth with services upon
35 his or her release from the substance abuse facility.

36 (4) Long-term planning so that the youth may be
37 returned to the home of the parent or guardian under
38 conditions which favor long-term reunification with the
39 family, or so the youth can be suitably placed in a situation

1 outside of the parental or guardian home when such
2 reunification is not possible.

3 (5) Outreach services and activities to locate runaway
4 youth and to link them with project services.

5 (b) Family crisis resolution services to runaway and
6 nonrunaway youth and their families which shall include:

7 (1) Parent training.

8 (2) Family counseling.

9 (3) Services designed to reunify youth and their
10 families.

11 (4) Referral to other services offered in the
12 community by public and private agencies.

13 (5) Long-term planning so that the youth may be
14 returned to the home of the parent or guardian under
15 conditions which favor long-term reunification with the
16 family, or so the youth can be suitably placed in a situation
17 outside of the parental or guardian home when such
18 reunification is not possible.

19 (6) Followup services to ensure that the return to the
20 parent or guardian or the placement outside of the
21 parental or guardian home is stable.

22 (7) Outreach services and activities to locate runaway
23 and nonrunaway youth and to link them with project
24 services.

25 (c) Transitional living services shall include:

26 (1) Long-term shelter.

27 (2) Independent living skill services.

28 (3) Preemployment and employment skills training.

29 (4) Home responsibilities training.

30 (d) Where appropriate and necessary, some of the
31 services identified under this section must also be
32 provided in the local community and in the home of
33 project clients. Projects shall notify parents that their
34 children are staying at a project site consistent with state
35 and federal parent notification requirements.

36 SEC. 197. Section 1792 of the Welfare and Institutions
37 Code is amended and renumbered to read:

38 ~~1792.~~

39 1789. (a) A Runaway Youth and Families in Crisis
40 Project shall be established in one or more counties in the

1 San Joaquin Central Valley, in one or more counties in the
2 northern region of California, and in one or more counties
3 in the southern region of California. Each project may
4 have one central location, or more than one site, in order
5 to effectively serve the target population.

6 (b) The Office of Criminal Justice Planning shall
7 prepare and disseminate a request for proposals to
8 prospective grantees under this chapter within four
9 months after this chapter has been approved and enacted
10 by the Legislature. The Office of Criminal Justice
11 Planning shall enter into grant award agreements for a
12 period of no less than three years, and the operation of
13 projects shall begin no later than four months after grant
14 award agreements are entered into between the Office
15 of Criminal Justice Planning and the grantee. Grants shall
16 be awarded based on the quality of the proposal, the
17 documented need for services in regard to runaway
18 youth, and to organizations, as specified in subdivision (d)
19 of this section, in localities that receive a
20 disproportionately low share of existing federal and state
21 support for youth shelter programs.

22 (c) The Office of Criminal Justice Planning shall
23 require applicants to identify, in their applications,
24 measurable outcomes by which the Office of Criminal
25 Justice Planning will measure the success of the
26 applicant's project. These measurable outcomes shall
27 include, but not be limited to, the number of clients
28 served and the percentage of clients who are successfully
29 returned to the home of a parent or guardian or to an
30 alternate living condition when reunification is not
31 possible.

32 (d) Only private, nonprofit organizations shall be
33 eligible to apply for funds under this chapter to operate
34 a Runaway Youth and Families in Crisis Project, and these
35 organizations shall be required to annually contribute a
36 local match of at least 15 percent in cash or in-kind
37 contribution to the project during the term of the grant
38 award agreement. Preference shall be given to
39 organizations that demonstrate a record of providing
40 effective services to runaway youth or families in crisis for

1 at least three years, successfully operating a youth shelter
2 for runaway and homeless youth, or successfully
3 operating a transitional living facility for runaway and
4 homeless youth who do not receive transitional living
5 services through the juvenile justice system. Additional
6 weight shall also be given to those organizations that
7 demonstrate a history of collaborating with other
8 agencies and individuals in providing such services.
9 Priority shall be given to organizations with existing
10 facilities. Preference shall also be given to organizations
11 that demonstrate the ability to progressively decrease
12 their reliance on resources provided under this chapter
13 and to operate this project beyond the period that the
14 organization receives funds under this chapter.

15 SEC. 198. Section 1793 of the Welfare and Institutions
16 Code is amended and renumbered to read:

17 ~~1793.~~

18 1789.5 The Office of Criminal Justice Planning shall
19 monitor and evaluate the ~~six~~ projects established under
20 this chapter, and shall report to the Legislature after the
21 first and third year of the program's operation the results
22 of its evaluation. In addition, each project shall be
23 responsible for evaluating the effectiveness of ~~their~~
24 ~~respective~~ *its* programs and services.

25 SEC. 199. Section 1801 of the Welfare and Institutions
26 Code is amended to read:

27 1801. (a) If a petition is filed with the court for an
28 order as provided in Section 1800; and, upon review, the
29 court determines that the petition, on its face, supports a
30 finding of probable cause, the court shall order that a
31 hearing be held pursuant to subdivision (b). The court
32 shall notify the person whose liberty is involved; and, if
33 the person is a minor, his or her parent or guardian (if that
34 person can be reached, and, if not, the court shall appoint
35 a person to act in the place of the parent or guardian) of
36 the hearing, and shall afford the person an opportunity to
37 appear at the hearing with the aid of counsel and the right
38 to ~~cross-examine~~ *cross-examine* experts or other witnesses
39 upon whose information, opinion, or testimony the
40 petition is based. The court shall inform the person

1 named in the petition of his or her right of process to
2 compel attendance ~~or~~ of relevant witnesses and the
3 production of relevant evidence. When the person is
4 unable to provide his or her own counsel, the court shall
5 appoint counsel to represent him or her.

6 The probable cause hearing shall be held within 10
7 calendar days after the date the order is issued pursuant
8 to this subdivision unless the person named in the petition
9 waives this time.

10 (b) At the probable cause hearing, the court shall
11 receive evidence and determine whether there is
12 probable cause to believe that discharge of the person
13 would be physically dangerous to the public because of his
14 or her mental or physical deficiency, disorder, or
15 abnormality. If the court determines there is not probable
16 cause, the court shall dismiss the petition and the person
17 shall be discharged from the control of the authority at
18 the time required by Section 1766, 1769, 1770, 1770.1, or
19 1771, as applicable. If the court determines ~~that~~ there is
20 probable cause, the court shall order that a trial be
21 conducted to determine whether the person is physically
22 dangerous to the public because of his or her mental or
23 physical deficiency, disorder, or abnormality.

24 SEC. 200. Section 5768.5 of the Welfare and
25 Institutions Code is amended to read:

26 5768.5. (a) When a mental health patient is being
27 discharged from any facility authorized under Section
28 5675 or 5768, the patient and the patient's conservator,
29 guardian, or other legally authorized representative shall
30 be given a written aftercare plan prior to the patient's
31 discharge from the facility. The written aftercare plan
32 shall include, to the extent known, the following
33 components:

34 (1) The nature of the illness and followup required.

35 (2) Medications, including side effects *and* dosage
36 schedules. If the patient was given an informed consent
37 form with his or her medications, the form shall satisfy the
38 requirement for information on side effects of the
39 medications.

40 (3) Expected course of recovery.

1 (4) Recommendations regarding treatment that are
2 relevant to the patient's care.

3 (5) Referrals to providers of medical and mental
4 health services.

5 (6) Other relevant information.

6 (b) The patient shall be advised by facility personnel
7 that he or she may designate another person to receive a
8 copy of the aftercare plan. A copy of the aftercare plan
9 shall be given to any person designated by the patient.

10 (c) For purposes of this section, "mental health
11 patient" means a person who is admitted to the facility
12 primarily for the diagnosis or treatment of a mental
13 disorder.

14 SEC. 201. Section 6609.1 of the Welfare and
15 Institutions Code is amended to read:

16 6609.1. (a) When the State Department of Mental
17 Health makes a recommendation to the court for
18 community outpatient treatment for any person
19 committed as a sexually violent predator, it shall notify
20 the sheriff or chief of police, or both, the district attorney,
21 or the county's designated counsel, that have jurisdiction
22 over the following locations:

23 (1) The community in which the person may be
24 released for community outpatient treatment.

25 (2) The community in which the person maintained
26 his or her last legal residence as defined by Section 3003
27 of the Penal Code.

28 (3) The county ~~which~~ *that* filed for the person's civil
29 commitment pursuant to this article.

30 The department shall also notify the ~~Department of~~
31 ~~Corrections~~² Sexually Violent Predator Parole
32 Coordinator *of the Department of Corrections*, if the
33 person is otherwise subject to parole pursuant to Article
34 1 (commencing with Section 3000) of Chapter 8 of Title
35 1 of Part 3 of the Penal Code.

36 The notice shall be given at least 15 days prior to the
37 department's submission of its recommendation to the
38 court.

39 (b) When the State Department of Mental Health
40 makes a recommendation to pursue recommitment,

1 *makes* a recommendation not to pursue recommitment,
2 or seeks a judicial review of commitment status pursuant
3 to subdivision (f) of Section 6605, of any person
4 committed as a sexually violent predator, it shall provide
5 written notice of that action to the sheriff or chief of
6 police, or both, and to the district attorney, that have
7 jurisdiction over the following locations:

8 (1) The community in which the person maintained
9 his or her last legal residence as defined by Section 3003
10 of the Penal Code.

11 (2) The probable community in which the person will
12 be released, if recommending not to pursue
13 recommitment.

14 (3) The county ~~which~~ *that* filed for the person's civil
15 commitment pursuant to this article.

16 The State Department of Mental Health shall also
17 notify the ~~Department of Corrections~~² Sexually Violent
18 Predator Parole Coordinator *of the Department of*
19 *Corrections*, if the person is otherwise subject to parole
20 pursuant to Article 1 (commencing with Section 3000) of
21 Chapter 8 of Title 1 *of Part 3* of the Penal Code. The notice
22 shall be made at least 15 days prior to the department's
23 submission of its recommendation to the court.

24 Those agencies receiving the notice referred to in this
25 subdivision shall have 15 days from receipt of the notice
26 to provide written comment to the department
27 regarding the impending release. Those comments shall
28 be considered by the department, which may modify its
29 decision regarding the community in which the person is
30 scheduled to be released, based on those comments.

31 (c) If the court orders the release of a sexually violent
32 predator, the court shall notify the ~~Department of~~
33 ~~Corrections~~ Sexually Violent Predator Parole
34 Coordinator *of the Department of Corrections*. The
35 Department of Corrections shall notify the State
36 Department of Mental Health, the sheriff or chief of
37 police, or both, and the district attorney, that have
38 jurisdiction over the following locations:

39 (1) The community in which the person is to be
40 released.

(2) The community in which the person maintained his or her last legal residence as defined in Section 3003 of the Penal Code.

The Department of Corrections shall make the above notifications regardless of whether the person released will be serving a term of parole after release by the court.

(d) If the person is otherwise subject to parole pursuant to Article 1 (commencing with Section 300) of Chapter 8 of Title 1 of Part 3 of the Penal Code, to allow adequate time for the Department of Corrections to make appropriate parole arrangements upon release of the person, the person shall remain in physical custody for a period not to exceed 72 hours or until parole arrangements are made by the ~~Department of Corrections~~ Sexually Violent Predator Parole Coordinator *of the Department of Corrections*, whichever is sooner. To facilitate timely parole arrangements, notification to the ~~Department of Corrections~~ Sexually Violent Predator Parole Coordinator *of the Department of Corrections* of the pending release shall be made by telephone or facsimile and, to the extent possible, notice of the possible release shall be made in advance of the proceeding or decision determining whether to release the person.

(e) The notice required by this section shall be made whether or not a request has been made pursuant to Section 6609.

(f) The time limits imposed by this section are not applicable ~~where~~ *when* the release date of a sexually violent predator has been advanced by a judicial or administrative process or procedure that could not have reasonably been anticipated by the State Department of Mental Health and where, as the result of the time adjustments, there is less than 30 days remaining on the commitment before the inmate's release, but notice shall be given as soon as practicable. In no case shall notice required by this section to the appropriate agency be later than the day of release.

(g) The provisions of this section are severable. If any provision of this section or its application is held invalid,

1 that invalidity shall not affect other provisions or
2 applications that can be given effect without the invalid
3 provision or application.

4 SEC. 202. Section 10980 of the Welfare and
5 Institutions Code is amended to read:

6 10980. (a) Any person who, willfully and knowingly,
7 with the intent to deceive, makes a false statement or
8 representation or knowingly fails to disclose a material
9 fact in order to obtain aid under the provisions of this
10 division or who, knowing he or she is not entitled thereto,
11 attempts to obtain aid or to continue to receive aid to
12 which he or she is not entitled, or to receive a larger
13 amount than that to which he or she is legally entitled, is
14 guilty of a misdemeanor, punishable by imprisonment in
15 the county jail for a period of not more than six months,
16 *by* a fine of not more than five hundred dollars (\$500), or
17 by both imprisonment and fine.

18 (b) Any person who knowingly makes more than one
19 application for aid under the provisions of this division
20 with the intent of establishing multiple entitlements for
21 any person for the same period or who makes an
22 application for that aid for a fictitious or nonexistent
23 person or by claiming a false identity for any person is
24 guilty of a felony, punishable by imprisonment in the
25 state prison for a period of 16 months, two years, or three
26 years, *by* a fine of not more than five thousand dollars
27 (\$5,000), or by both imprisonment and fine; or by
28 imprisonment in the county jail for a period of not more
29 than one year, or *by* a fine of not more than one thousand
30 dollars (\$1,000), or by both imprisonment and fine.

31 (c) Whenever any person has, by means of false
32 statement or representation or by impersonation or other
33 fraudulent device, obtained or retained aid under the
34 provisions of this division for himself or herself or for a
35 child not in fact entitled thereto, the person obtaining this
36 aid shall be punished as follows:

37 (1) If the total amount of the aid obtained or retained
38 is four hundred dollars (\$400) or less, by imprisonment in
39 the county jail for a period of not more than six months,

1 *by* a fine of not more than five hundred dollars (\$500), or
2 by both imprisonment and fine.

3 (2) If the total amount of the aid obtained or retained
4 is more than four hundred dollars (\$400), by
5 imprisonment in the state prison for a period of 16
6 months, two years, or three years, *by* a fine of not more
7 than five thousand dollars (\$5,000), or by both
8 imprisonment and fine; or by imprisonment in the county
9 jail for a period of not more than one year, ~~or~~ *by* a fine of
10 not more than one thousand dollars (\$1,000), or by both
11 imprisonment and fine.

12 (d) Any person who knowingly uses, transfers,
13 acquires, or possesses blank authorizations to participate
14 in the federal Food Stamp Program in any manner not
15 authorized by Chapter 10 (commencing with Section
16 18900) of Part 6 with the intent to defraud is guilty of a
17 felony, punishable by imprisonment in the state prison for
18 a period of 16 months, two years, or three years, *by* a fine
19 of not more than five thousand dollars (\$5,000), or by both
20 imprisonment and fine.

21 (e) Any person who counterfeits or alters or
22 knowingly uses, transfers, acquires, or possesses
23 counterfeited or altered authorizations to participate in
24 the federal Food Stamp Program or to receive food
25 stamps or electronically transferred benefits in any
26 manner not authorized by the Food Stamp Act of 1964
27 (Public Law 88-525 and all amendments ~~made~~ thereto)
28 or the federal regulations pursuant to the act is guilty of
29 forgery.

30 (f) Any person who fraudulently appropriates food
31 stamps, electronically transferred benefits, or
32 authorizations to participate in the federal Food Stamp
33 Program with which he or she has been entrusted
34 pursuant to his or her duties as a public employee is guilty
35 of embezzlement of public funds.

36 (g) ~~Whoever~~—Any person who knowingly uses,
37 transfers, sells, purchases, or possesses food stamps,
38 electronically transferred benefits, or authorizations to
39 participate in the federal Food Stamp Program in any
40 manner not authorized by Chapter 10 (commencing with

1 Section 18900), of Part 6, or by the federal Food Stamp
 2 Act of 1977 (Public Law 95-113 and all amendments ~~made~~
 3 thereto) ~~is~~; (1) *is* guilty of a misdemeanor if the face value
 4 of the food stamp benefits or the authorizations to
 5 participate is four hundred dollars (\$400) or less, and shall
 6 be punished by imprisonment in the county jail for a
 7 period of not more than six months, *by* a fine of not more
 8 than five hundred dollars (\$500), or by both
 9 imprisonment and fine, or (2) *is* guilty of a felony if the
 10 face value of the food stamps or the authorizations to
 11 participate exceeds four hundred dollars (\$400), and shall
 12 be punished by imprisonment in the state prison for a
 13 period of 16 months, two years, or three years, *by* a fine
 14 of not more than five thousand dollars (\$5,000), or by both
 15 imprisonment and fine, or by imprisonment in the county
 16 jail for a period of not more than one year, or *by* a fine of
 17 not more than one thousand dollars (\$1,000), or by both
 18 imprisonment and fine.

19 (h) (1) If the violation of subdivision (f) or (g) is
 20 committed by means of an electronic transfer of benefits,
 21 in addition and consecutive to the penalties for the
 22 violation, or attempted violation, of those subdivisions,
 23 the court shall impose the following punishment:

24 (A) If the electronic transfer of benefits exceeds fifty
 25 thousand dollars (\$50,000), an additional term of one year
 26 in state prison.

27 (B) If the electronic transfer of benefits exceeds one
 28 hundred fifty thousand dollars (\$150,000), an additional
 29 term of two years in state prison.

30 (C) If the electronic transfer of benefits exceeds one
 31 million dollars (\$1,000,000), an additional term of three
 32 years in state prison.

33 (D) If the electronic transfer of benefits exceeds two
 34 million five hundred thousand dollars (\$2,500,000), an
 35 additional term of four years.

36 (2) In any accusatory pleading involving multiple
 37 charges of violations of subdivision (f) or (g), or both,
 38 committed by means of an electronic transfer of benefits,
 39 the additional terms provided in paragraph (1) may be
 40 imposed if the aggregate losses to the victims from all

1 violations exceed the amounts specified in this paragraph
2 and arise from a common scheme or plan.

3 (i) A person who is punished by an additional term of
4 imprisonment under another provision of law for a
5 violation of subdivision (f) or (g) shall not receive an
6 additional term of imprisonment under subdivision (h).

7 SEC. 203. Section 11008.19 of the Welfare and
8 Institutions Code, as added by Section 2 of Chapter 962 of
9 the Statutes of 1998, is amended and renumbered to read:

10 ~~11008.19.~~

11 *11008.20.* (a) Notwithstanding any other provision of
12 law, any amount, including any interest or property,
13 received by a holocaust victim, as defined in
14 subparagraph (A) of paragraph (2) of subdivision (b) of
15 Section 17155 of the Revenue and Taxation Code either
16 as compensation pursuant to the German Act Regulating
17 Unresolved Property Claims, as amended (Gesetz zur
18 Regelung offener Vermögensfragen), or as a result of a
19 settlement of claims against any entity or individual for
20 any recovered asset, shall not be considered as income or
21 resources for purposes of determining eligibility to
22 receive Medi-Cal benefits or public assistance benefits or
23 the amounts of those benefits.

24 (b) This section shall not be construed to permit any
25 retroactive services or payments to be provided to
26 recipients of Medi-Cal or public assistance benefits.

27 SEC. 204. Section 11369 of the Welfare and
28 Institutions Code is amended to read:

29 11369. The department shall adopt regulations, as
30 otherwise necessary, to implement ~~the provisions of~~ this
31 article. Emergency regulations to implement ~~the~~
32 ~~provisions of~~ this article may be adopted by the
33 department in accordance with Chapter 3.5
34 (commencing with Section 11340) of Part 1 of Division 3
35 of Title 2 of the Government Code. The adoption of these
36 regulations shall be deemed an emergency and necessary
37 for the immediate ~~regulations shall be deemed an~~
38 ~~emergency and necessary for the immediate~~
39 preservation of the public peace, health and safety, or
40 general welfare.

1 SEC. 205. Section 11401 of the Welfare and
2 Institutions Code is amended to read:

3 11401. Aid in the form of AFDC-FC shall be provided
4 under this chapter on behalf of any child under the age
5 of 18 years, except as provided in Section 11403, who
6 meets the conditions of subdivision (a), (b), (c), (d), (e),
7 or (f):

8 (a) The child has been relinquished, for purposes of
9 adoption, to a licensed adoption agency, or the
10 department, or the parental rights of either or both of his
11 or her parents have been terminated after an action
12 under the Family Code has been brought by a licensed
13 adoption agency or the department, provided that the
14 licensed adoption agency or the department, if
15 responsible for placement and care, provides to such
16 children all services as required by the department to
17 children in foster care.

18 (b) The child has been removed from the physical
19 custody of his or her parent, relative, or guardian as a
20 result of a voluntary placement agreement or a judicial
21 determination that continuance in the home would be
22 contrary to the child's welfare and that, if the child was
23 placed in foster care, reasonable efforts were made,
24 consistent with Chapter 5 (commencing with Section
25 16500) of Part 4, to prevent or eliminate the need for
26 removal of the child from his or her home and to make it
27 possible for the child to return to his or her home, or, in
28 cases where the first contact with the family occurs
29 during an emergency situation in which the child could
30 not safely remain at home even with reasonable efforts
31 being provided, the child has been removed as a result of
32 a judicial determination that lack of preplacement
33 preventive efforts, as defined in Section 16501.1, was
34 reasonable, and any of the following apply:

35 (1) The child has been adjudged a dependent child of
36 the court on the grounds that he or she is a person
37 described by Section 300.

38 (2) The child has been adjudged a ward of the court on
39 the grounds that he or she is a person described by
40 Sections 601 and 602.

1 (3) The child has been detained under a court order,
2 pursuant to Section 319 or 636—~~which~~, *that* remains in
3 effect.

4 (c) The child has been voluntarily placed by his or her
5 parent or guardian pursuant to Section 11401.1.

6 (d) The child is living in the home of a nonrelated legal
7 guardian.

8 (e) The child has been placed in foster care under the
9 federal Indian Child Welfare Act. Sections 11402, 11404,
10 and 11405 shall not be construed as limiting payments to
11 Indian children, as defined in the federal Indian Child
12 Welfare Act, placed in accordance with that act.

13 (f) To be eligible for federal financial participation, all
14 of the following conditions shall exist:

15 (1) The child ~~shall—meet~~ *meets* the conditions of
16 subdivision (b).

17 (2) The child ~~shall—have~~ *has* been deprived of parental
18 support or care for any of the reasons set forth in Section
19 11250.

20 (3) The child ~~shall—have~~ *has* been removed from the
21 home of a relative as defined in Section 233.90(c)(1) of
22 Title 45 of the Code of Federal Regulations, as amended.

23 (4) The requirements of Sections 671 and 672 of Title
24 42 of the United States Code, as amended, have been met.

25 SEC. 206. Section 12302.3 of the Welfare and
26 Institutions Code is amended to read:

27 12302.3. (a) Notwithstanding any other provision of
28 this article, and in a manner consistent with the powers
29 available to public authorities created under this article,
30 the City and County of San Francisco may *do any of the*
31 *following*:

32 (1) Increase the wages of all in-home supportive
33 services providers.

34 (2) Subject to the requirements of federal law, use
35 county-only funds to fund county and state shares to meet
36 federal financial participation requirements necessary to
37 obtain any available *personal care services*
38 *reimbursement under* Title XIX of the federal Social
39 Security Act (42 U.S.C. Sec. 1396; et seq.) (Medicaid)
40 ~~personal care services reimbursement~~.

1 (3) Provide in-home supportive services workers with
2 any wage increase the city and county may appropriate,
3 as long as this amount is in accordance with the provisions
4 of the Medi-Cal State Plan Amendment 94-006, as
5 approved by the federal Health Care Financing
6 Administration. The county-only funds shall be used
7 exclusively to increase ~~workers~~ workers' wages and to pay
8 any proportionate share of employer taxes and current
9 benefits, and to pay for the cost of state and county
10 administration of these activities as provided for in
11 paragraph (5). Notwithstanding Section 12302.1, any
12 wage increase for those workers employed under
13 contract shall be passed through by the contractor to the
14 workers, subject to the limitations specified in this
15 paragraph. The state shall continue to provide payroll
16 functions for all workers who are currently individual
17 providers unless and until the in-home supportive
18 services public authority is operational.

19 (4) Claim the administrative costs of the wage
20 passthrough in accordance with the department's
21 claiming requirements.

22 (5) ~~In the event~~ If that federal financial participation
23 is available for county-only payroll moneys, the following
24 shall apply:

25 (A) If additional payroll costs will be incurred by the
26 state due to the receipt and payment of federal funds, the
27 department shall provide the city and county with a
28 detailed estimate of the additional costs of the provision
29 of payroll functions associated with the processing of
30 federal funds. If the city and county elects to pay the
31 additional costs, the department will provide these
32 payroll functions. If the city and county does not elect to
33 pay the additional costs, the department and the city and
34 county may seek another, mutually satisfactory
35 arrangement.

36 (B) ~~In the event~~ If that federal financial participation
37 is not available, the department shall continue to perform
38 the existing payroll functions provided on July 28, 1995, at
39 no additional cost to the city and county.

1 (b) (1) This section shall not be implemented with
2 respect to any particular wage increase pursuant to
3 subdivision (a) unless the department has obtained the
4 approval of the State Department of Health Services for
5 that wage increase prior to its execution to determine
6 that it is consistent with federal law and to ensure federal
7 financial participation for the services under Title XIX of
8 the federal Social Security Act (42 U.S.C. Sec. 1396; et
9 seq.).

10 (2) The Director of Health Services shall seek any
11 federal waivers or approvals necessary for
12 implementation of this section under Title XIX of the
13 federal Social Security Act (42 U.S.C. Sec. 1396; et seq.).

14 SEC. 207. Section 16118 of the Welfare and
15 Institutions Code is amended to read:

16 16118. (a) The department shall establish and
17 administer the program to be carried out by the
18 department or the county pursuant to this chapter. The
19 department shall adopt any regulations necessary to carry
20 out the provisions of this chapter.

21 (b) The department shall keep any records necessary
22 to evaluate the program's effectiveness in encouraging
23 and promoting the adoption of children eligible for the
24 Adoption Assistance Program.

25 (c) The department or the county responsible for
26 providing financial aid in the amount determined in
27 Section 16120 shall have responsibility for certifying that
28 the child meets the eligibility criteria and for
29 determining the amount of financial assistance needed by
30 the child and the adopting family.

31 (d) The department shall actively seek and make
32 maximum use of federal funds that may be available for
33 the purposes of this chapter. All gifts or grants received
34 from private sources for the purpose of this chapter shall
35 be used to offset public costs incurred under the program
36 established by this chapter.

37 (e) For purposes of this chapter, the county
38 responsible for determining the child's Adoption
39 Assistance Program eligibility status and for providing
40 financial aid in the amount determined in Sections 16120

1 and 16120.1 shall be the county that at the time of the
2 adoptive placement would otherwise be responsible for
3 making a payment pursuant to Section 11450 under the
4 Aid to Families with Dependent Children program or
5 Section 11461 under the Aid to Families with Dependent
6 Children-Foster Care program if the child ~~were not had~~
7 *not been* adopted. The responsible county for all other
8 eligible children shall be the county where the child is
9 physically residing prior to placement with the adoptive
10 family. The responsible county shall certify eligibility on
11 a form prescribed by the department.

12 SEC. 208. Section 16501.1 of the Welfare and
13 Institutions Code is amended to read:

14 16501.1. (a) The Legislature finds and declares that
15 the foundation and central unifying tool in child welfare
16 services is the case plan.

17 (b) The Legislature further finds and declares that a
18 case plan ensures that the child receives protection and
19 safe and proper care and case management, and that
20 services are provided to the child and parents or other
21 caretakers as appropriate in order to improve conditions
22 in the parent's home, to facilitate the safe return of the
23 child to a safe home or the permanent placement of the
24 child, and to address the needs of the child while in foster
25 care. A case plan shall be based upon the principles of this
26 section and shall document that a preplacement
27 assessment of the service needs of the child and family,
28 and preplacement preventive services, have been
29 provided, and that reasonable efforts to prevent
30 out-of-home placement have been made. In determining
31 the reasonable services to be offered or provided, the
32 child's health and safety shall be the paramount concerns.
33 Reasonable services shall be offered or provided to make
34 it possible for a child to return to a safe home
35 environment, unless, pursuant to subdivisions (b) and (e)
36 of Section 361.5, the court determines that reunification
37 services shall not be provided. If reasonable services are
38 not ordered, or are terminated, reasonable efforts shall be
39 made to place the child in a timely manner in accordance
40 with the permanent plan and to complete all steps

1 necessary to finalize the permanent placement of the
2 child.

3 (c) When out-of-home placement is used to attain case
4 plan goals, the decision regarding choice of placement
5 shall be based upon selection of a safe setting that is the
6 least restrictive or most familylike, and the most
7 appropriate setting that is available and in close proximity
8 to the parent's home, consistent with the selection of the
9 environment best suited to meet the child's special needs
10 and best interest, or both. The selection shall consider, in
11 order of priority, placement with relatives, tribal
12 members, and foster family, group care, and residential
13 treatment pursuant to Section 7950 of the Family Code.

14 (d) A written case plan shall be completed within 30
15 days of the initial removal of the child or of the in-person
16 response required under subdivision (f) of Section 16501
17 if the child has not been removed from his or her home,
18 or by the date of the dispositional hearing pursuant to
19 Section 358, whichever occurs first. The case plan shall be
20 updated, as the service needs of the child and family
21 dictate. At a minimum, the case plan shall be updated in
22 conjunction with each status review hearing conducted
23 pursuant to Section 366.21, and the hearing conducted
24 pursuant to Section 366.26, but no less frequently than
25 once every six months. Each updated case plan shall
26 include a description of the services that have been
27 provided to the child under the plan and an evaluation of
28 the appropriateness and effectiveness of those services.

29 (e) The child welfare services case plan shall be
30 comprehensive enough to meet the juvenile court
31 dependency proceedings requirements pursuant to
32 Article 6 (commencing with Section 300) of Chapter 2 of
33 Part 1 of Division 2.

34 (f) The case plan shall be developed as follows:

35 (1) The case plan shall be based upon an assessment of
36 the circumstances that required child welfare services
37 intervention.

38 (2) The case plan shall identify specific goals and the
39 appropriateness of the planned services in meeting those
40 goals.

(3) The case plan shall identify the original allegations of abuse or neglect, as defined in Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code, or the conditions cited as the basis for declaring the child a dependent of the court pursuant to Section 300, or all of these, and the other precipitating incidents that led to child welfare services intervention.

(4) The case plan shall include a description of the schedule of the social worker contacts with the child and the family or other caretakers. The frequency of these contacts shall be in accordance with regulations adopted by the State Department of Social Services. If the child has been placed in foster care out-of-state, the county social worker or a social worker on the staff of the social service agency in the state in which the child has been placed shall visit the child in a foster family home or the home of a relative at least every 12 months and submit a report to the court on each visit. For children in out-of-state group home facilities, visits shall be conducted at least monthly, pursuant to Section 16516.5.

(5) When out-of-home services are used, the frequency of contact between the natural parents or legal guardians and the child shall be specified in the case plan. The frequency of those contacts shall reflect overall case goals, and consider other principles outlined in this section.

(6) When out-of-home placement is made, the case plan shall include documentation of the provisions specified in subdivisions (b), (c), and (d) of Section 16002.

(7) When out-of-home placement is made in a foster family home, group home, or other child care institution that is either a substantial distance from the home of the child's parent or out-of-state, the case plan shall specify the reasons why that placement is in the best interest of the child. When an out-of-state group home placement is recommended or made, the case plan shall, in addition, specify compliance with Section 7911.1 of the Family Code.

1 (8) When out-of-home services are used, or when
2 parental rights have been terminated and the case plan
3 is placement for adoption, the case plan shall include a
4 recommendation regarding the appropriateness of
5 unsupervised visitation between the child and any of the
6 child's siblings. This recommendation shall include a
7 statement regarding the child's and the siblings'
8 willingness to participate in unsupervised visitation. If the
9 case plan includes a recommendation for unsupervised
10 sibling visitation, the plan shall also note that information
11 necessary to accomplish this visitation has been provided
12 to the child or to the child's siblings.

13 (9) When out-of-home services are used and the goal
14 is reunification, the case plan shall describe the services
15 to be provided to assist in reunification and the services
16 to be provided concurrently to achieve legal permanency
17 if efforts to reunify fail.

18 (10) When out-of-home services are used, the child's
19 case plan is subject to review at the first 12-month
20 permanency hearing; and, if the case plan is not adoptive
21 placement, the case plan shall include documentation of
22 the compelling reason or reasons why termination of
23 parental rights is not in the child's best interest. A
24 determination by the department, when it is acting as an
25 adoption agency, or by a licensed adoption agency that it
26 ~~is unlikely that the child will be adopted~~ *adoption of the*
27 *child is unlikely*, or that one of the conditions described
28 in paragraph (1) of subdivision (c) of Section 366.26
29 applies, shall be deemed a compelling reason.

30 (11) (A) Parents and legal guardians shall have an
31 opportunity to review the case plan; *and* sign it whenever
32 possible, ~~and then after which they~~ shall receive a copy
33 of the plan. In any voluntary service or placement
34 agreement, the parents or legal guardians shall be
35 required to review and sign the case plan. Whenever
36 possible, parents and legal guardians shall participate in
37 the development of the case plan.

38 (B) Parents and legal guardians shall be advised that,
39 pursuant to Section 1228.1 of the Evidence Code, neither
40 their signature on the child welfare services case plan nor

1 their acceptance of any services prescribed in the child
2 welfare services case plan shall constitute an admission of
3 guilt or be used as evidence against the parent or legal
4 guardian in a court of law. However, they shall also be
5 advised that the parent's or guardian's failure to
6 cooperate, except for good cause, in the provision of
7 services specified in the child welfare services case plan
8 may be used *as evidence* in any hearing held pursuant to
9 Section 366.21 or 366.22 ~~as evidence~~.

10 (12) The case plan shall be included in the court report
11 and shall be considered by the court at the initial hearing
12 and each review hearing. Modifications to the case plan
13 made during the period between review hearings need
14 not be approved by the court if the casework supervisor
15 for that case determines that the modifications further
16 the goals of the plan.

17 (13) When the case plan has as its goal for the child a
18 permanent plan of adoption or placement in another
19 permanent home, it shall include documentation of the
20 steps the agency is taking to find an adoptive family or
21 other permanent living arrangements for the child; to
22 place the child with an adoptive family, an appropriate
23 and willing relative, a legal guardian, or in another
24 planned permanent living arrangement; and to finalize
25 the adoption or legal guardianship. At a minimum, the
26 documentation shall include ~~child-specific~~ *child-specific*
27 recruitment efforts, such as the use of state, regional, and
28 national adoption exchanges, including electronic
29 exchange systems, when the child has been freed for
30 adoption.

31 (g) If the court finds, after considering the case plan,
32 that unsupervised sibling visitation is appropriate and has
33 been consented to, the court shall order that the child or
34 the child's siblings, and the child's prospective adoptive
35 parents, if applicable, be provided with information
36 necessary to accomplish this visitation. Nothing in this
37 section shall be construed to require or prohibit the social
38 worker's facilitation, transportation, or supervision of
39 visits between the child and his or her siblings.

1 (h) The case plan documentation on sibling
2 placements required under this section shall not require
3 modification of existing case plan forms until the Child
4 Welfare Services Case Management System is
5 implemented on a statewide basis.

6 (i) The department, in consultation with the County
7 Welfare Directors Association and other advocates, shall
8 develop standards and guidelines for a model relative
9 placement search and assessment process based on the
10 criteria established in Section 361.3. These guidelines
11 shall be incorporated in the training described in Section
12 16206. These model standards and guidelines shall be
13 developed by March 1, 1999.

14 SEC. 209. Section 17012.5 of the Welfare and
15 Institutions Code, as added by Section 2 of Chapter 283 of
16 the Statutes of 1997, is repealed.

17 ~~17012.5. An individual ineligible for aid under~~
18 ~~Chapter 2 (commencing with Section 11200) of Part 3~~
19 ~~pursuant to Section 11251.3, who is a member of an~~
20 ~~assistance unit receiving aid under that chapter, shall also~~
21 ~~be ineligible for nonhealth care benefits under this part.~~

22 SEC. 210. Section 17012.5 of the Welfare and
23 Institutions Code, as added by Section 2 of Chapter 284 of
24 the Statutes of 1997, is amended to read:

25 17012.5. An individual ineligible for aid under
26 Chapter 2 (commencing with Section 11200) of Part 3
27 pursuant to Section 11251.3, who is a member of an
28 assistance unit receiving aid under that chapter, shall also
29 be ineligible for ~~nonhealth care~~ *non-health-care* benefits
30 under this part.

31 SEC. 211. Section 8.2 of the County Water Authority
32 Act (Chapter 545 of the Statutes of 1943), as last amended
33 by Chapter 812 of the Statutes of 1998, is amended to read:

34 Sec. 8.2. (a) Any authority may, pursuant to this
35 section, borrow money and incur indebtedness for any of
36 the purposes for which it is authorized by law to spend
37 money. The indebtedness shall be evidenced by
38 short-term revenue certificates issued in the manner and
39 subject to the limitations set forth in this section. Any
40 authority may also borrow money and incur indebtedness

1 to pay the principal or interest on certificates issued
2 pursuant to this section.

3 (b) Certificates issued by any authority pursuant to
4 this section may be negotiable or nonnegotiable, and all
5 certificates shall be, and shall recite upon their face that
6 they are, payable both as to principal and interest out of
7 any revenues of the authority ~~which~~ *that* are made
8 security for the certificates pursuant to an indenture or
9 resolution duly adopted by the board of directors. The
10 word “revenues,” as used in this section, refers to any
11 revenues derived from the sale of water and power,
12 annexation charges (whether collected through tax levies
13 or otherwise), grants, available tax revenues, or any other
14 legally available funds. In no event shall any resolution or
15 indenture preclude payment from the proceeds of sale of
16 other certificates issued pursuant to this section or from
17 amounts drawn on a bank, or other financial institution,
18 ~~lines line or letter~~ of credit pursuant to subdivision (e), or
19 ~~from~~ any other lawfully available source of funds.

20 (c) To exercise the power to borrow money pursuant
21 to this section, the board shall adopt a resolution, or
22 approve an indenture, authorizing the sale and issuance
23 of certificates for that purpose, which resolution or
24 indenture shall specify all of the following:

25 (1) The purpose or purposes for which the proposed
26 certificates are to be issued.

27 (2) The maximum principal amount of the certificates
28 ~~which~~ *that* may be outstanding at any one time.

29 (3) The maximum interest cost, to be determined in
30 the manner specified in the resolution, to be incurred
31 through the issuance of the certificates.

32 (4) The maximum maturities of the certificates, which
33 shall not exceed 270 days from the date of issue.

34 (5) The obligations to certificate holders while the
35 certificates are outstanding.

36 (d) The board may also provide, in its discretion, for
37 any of the following:

38 (1) The times of sale and issuance of the certificates,
39 the manner of sale and issuance (either through public or
40 private sale), the amounts of the certificates, the

1 maturities of the certificates, the rate of interest, the rate
2 or discount from par, and any other terms and conditions
3 deemed appropriate by the board or by the general
4 manager of the authority or any other officer designated
5 by the board.

6 (2) The appointment of one or more banks or trust
7 companies, either inside or outside the state, as
8 depository for safekeeping and as agent for the delivery,
9 and the payment, of the certificates.

10 (3) The employment of one or more persons or firms
11 to assist the authority in the sale of the certificates,
12 whether as sales agents, *as* dealer managers, or in some
13 other comparable capacity.

14 (4) The refunding of the certificates without further
15 action by the board, unless and until the board specifically
16 revokes that authority to refund.

17 (5) Other terms and conditions the board determines
18 to be appropriate.

19 (e) The board may arrange for a bank, or other
20 financial institution, *a* line or letter of credit ~~for—(1)~~ (1)
21 *for* the purpose of providing an additional source of
22 repayment for indebtedness incurred under this section
23 and any interest thereon or; (2) for the purpose of
24 borrowing for any purpose for which short-term revenue
25 certificates could be issued under this section. Amounts
26 drawn on a line or letter of credit may be evidenced by
27 negotiable or nonnegotiable promissory notes or other
28 evidences of indebtedness. The board is authorized to use
29 any of the provisions of this section in connection with the
30 entering into of the line or letter of credit, borrowing
31 thereunder, or repaying of the borrowings.

32 SEC. 212. Section 2 of Chapter 21 of the Statutes of
33 1998 is amended to read:

34 Sec. 2. The provisions of the ~~following~~ memorandum
35 of understanding; prepared pursuant to Section 3517.5 of
36 the Government Code; and entered into by the state
37 employer and State Bargaining Unit 6, California
38 Correctional Peace Officers Association, ~~and~~ that
39 ~~requires~~ *require* the expenditure of funds, are hereby

1 approved for the purposes of Section 3517.6 of the
2 Government Code.

3 SEC. 213. Section 111 of Chapter 310 of the Statutes
4 of 1998 is amended to read:

5 Sec. 111. (a) The sum of two million six hundred
6 thousand dollars (\$2,600,000) is hereby appropriated
7 from the Proposition 98 Reversion Account to a
8 consortium of county offices of education, on a one-time
9 basis, for three-year grants, beginning with the 1998–99
10 fiscal year, for the purpose of supporting technical
11 assistance and ~~foeussed~~ *focused* group training to teach
12 school district personnel how to maximize
13 reimbursements of federal funds for Medi-Cal services
14 and case management.

15 (b) (1) There is hereby created, for purposes of this
16 section, a technical advisory committee, which shall be
17 composed of one representative from each of the 11
18 school superintendent regions, representatives from
19 appropriate state departments and agencies,
20 representatives from various school health and social
21 services organizations, four members representing large
22 school districts, four members representing medium
23 school districts, four members representing small school
24 districts, and representatives from various parent and
25 community services organizations.

26 (2) Expenses for the technical advisory committee
27 created pursuant to paragraph (1) shall not exceed
28 forty-five thousand dollars (\$45,000) per year of the funds
29 appropriated by this section.

30 (c) For the purposes of making the computations
31 required by Section 8 of Article XVI of the California
32 Constitution, the appropriation made by subdivision (a)
33 of Section 41202 of the Education ~~Code~~ *Code*, for the
34 1997–98 fiscal year, and included within the “total
35 allocations to school districts and community college
36 districts from General Fund proceeds of taxes
37 appropriated pursuant to Article XVIII B,” as defined in
38 subdivision (e) of Section 41202 of the Education Code,
39 for the 1997–98 fiscal year.

1 SEC. 214. Section 3 of Chapter 652 of the Statutes of
2 1998 is amended to read:

3 Sec. 3. It is the intent of the Legislature in enacting
4 Section 3 4 of this act that the protections under the
5 Newborns' and Mothers' Health Act of 1997 (Chapter 389
6 of the Statutes of 1997), which added Section 1367.62 to
7 the Health and Safety Code and Section 10123.87 to the
8 Insurance Code, shall apply equally to all pregnant
9 women eligible for benefits under Medi-Cal.

10 SEC. 215. Section 1 of Chapter 722 of the Statutes of
11 1998 is amended to read:

12 Section 1. (a) The Superintendent of Public
13 Instruction shall take steps necessary to increase the
14 capacity of the child care system, including, but not
15 limited to, the following:

16 (1) Encouraging contracting agencies to develop and
17 maintain child care spaces during nontraditional times,
18 including at night and on weekends.

19 (2) Encouraging contracting agencies to expand the
20 capacity for infant care.

21 (3) Encouraging contracting agencies to expand
22 capacity, particularly in geographic areas with high need
23 and limited resources.

24 (b) The State Department of Education shall
25 coordinate with the State Department of Social Services
26 to prepare and present an interim report by March 31,
27 1999, and a final report by December 31, 1999, to the Joint
28 Legislative Budget Committee and Department of
29 Finance that defines the strategies, results, and
30 effectiveness of recent expenditures and allocations for
31 building capacity for the state's child care needs,
32 including, but not limited to, the amounts and kinds of
33 capacity increased by those efforts, barriers found ~~in~~
34 ~~preventing~~ *that prevent* increased capacity, and
35 recommendations for overcoming those barriers. The
36 report shall include recommended best practices for
37 future capacity building activities specific to the types of
38 care in shortest supply, such as infant and toddler care,
39 ~~schoolage~~ *school-age* care, care in underserved areas, and
40 nontraditional hours care. This report shall also include

1 the results of current pilot studies involving training
2 CalWORKs recipients as licensed family child care
3 providers or ~~licensed-exempt~~ *license-exempt* providers,
4 and recommendations on the magnitude and role of both
5 CalWORKs recipient training and license-exempt care in
6 meeting future needs.

7 (c) It is the intent of the Legislature that any research
8 activities undertaken by the State Department of
9 Education pursuant to this section be funded by any
10 federal funds appropriated to the State Department of
11 Education for child care capacity-building efforts
12 pursuant to Item 6110-196-0001 of the Budget Act of 1998.

13 SEC. 216. Section 11 of Chapter 760 of the Statutes of
14 1998 is amended to read:

15 Sec. 11. (a) Section ~~6~~ 5 of this act shall become
16 operative only if Section 190 of the Penal Code, as
17 amended by Section 1 of Chapter 413 of the Statutes of
18 1997, is rejected by the voters at the statewide ~~general~~
19 election held ~~in~~ on June 2, 1998, in which case Section 7
20 6 of this act shall not become operative and shall not be
21 submitted to the voters.

22 (b) Section 7 6 of this act shall become operative if
23 Section 190 of the Penal Code, as amended by Section 1
24 of Chapter 413 of the Statutes of 1997, is approved by the
25 voters at the statewide ~~general~~ election held ~~in~~ on June
26 2, 1998, in which case Section ~~6~~ 5 of this act shall not
27 become operative and shall not be submitted to the
28 voters.

29 SEC. 217. Section 12 of Chapter 760 of the Statutes of
30 1998 is amended to read:

31 Sec. 12. Sections ~~6~~ 5 and 7 6 of this act affect an
32 initiative statute and shall become effective only when
33 submitted to, and approved by, the voters pursuant to
34 subdivision (c) of Section 10 of Article II of the California
35 Constitution and in accordance with the provisions of
36 Section ~~42~~ 11 of this act.

37 SEC. 218. Section 10 of Chapter 969 of the Statutes of
38 1998 is amended to read:

39 Sec. 10. All funds appropriated and positions created
40 for support of the office of the Inspector General in Item

1 0550-001-0001 of the Budget Act of 1998 shall be
2 transferred upon approval of the Department of Finance
3 to the office of the Inspector General as established
4 pursuant to Section 2 of this act.

5 SEC. 219. Any section of any act enacted by the
6 Legislature during the 1999 calendar year that takes
7 effect on or before January 1, 2000, and that amends,
8 amends and renumbers, adds, repeals and adds, or repeals
9 a section that is amended, amended and renumbered,
10 repealed and added, or repealed by this act, shall prevail
11 over this act, whether that act is enacted prior to, or
12 subsequent to, the enactment of this act. The repeal, or
13 repeal and addition, of any article, chapter, part, title, or
14 division of any code by this act shall not become operative
15 if any section of any other act that is enacted by the
16 Legislature during the 1999 calendar year and takes effect
17 on or before January 1, 2000, amends, amends and
18 renumbers, adds, repeals and adds, or repeals any section
19 contained in that article, chapter, part, title, or division.

